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THE DIGEST OF CANADIAN CRIMINAL CASE LAW

COMPRISING THE REPORTED CASES ON CRIMINAL LAW

Decided in any of the Courts in the Provinces of Canada and the North-West Territories having Criminal Jurisdiction in that Behalf in the First Instance and on Appeal from the earliest times to the year 1907

INCLUDING

Appeals to the Supreme Court of Canada; together with Tables of Cases contained in Digest and covering the following Journals and Publications in addition to the respective Provincial and Territorial Reports

Canadian Criminal Cases. Canada Law Journal.
Canadian Law Times. Western Law Reporter.
Western Law Times. Ontario Weekly Reporter.

BY

GEORGE E. McCROSSAN, M.A. LL.B.
SAMUEL D. SCHULTZ, B.A. ANDREW M. HARPER, B.A.
Barristers-at-Law

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PREFATORY NOTE

The Editors have endeavoured to cover in the Digest, notes of all reported criminal and quasi-criminal cases which have been reported in any of the various Provincial Reports, as well as in the leading periodicals and journals. The cases digested comprise reports of cases both before and after the criminal code of 1892, with the exception of the Province of Quebec, relative to which, cases since 1892 alone, have been noted.

Attention is directed to the annotations on the various code sections to be found on page 245 *et seq.* which annotations refer to the numbering of sections as they occur in the code of 1892. Sections of the Old Code are referred to for convenience of the Profession as it was deemed advisable to adopt the numerical citations employed by the Courts in each respective case.

Owing to the complete revision of the numerical order and various other changes effected in the Old Code of 1892 by R.S.C., 1906, Cap. 146 and 6 and 7 Edward VII 1907 Cap. 8, a complete analytical table of variations has been compiled and will be found on page 1045 of the Digest.

GEO. E. McCROSSAN.

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TABLE OF ABBREVIATIONS

A. C.	Appeal Cases.
All.	Allen's Reports (N. B.)
A. R.	Appeal Reports (Ontario).
B. C.	British Columbia.
B. C. R.	British Columbia Reports.
Ber.	Berton's Reports (N. B.)
B. N. A.	British North America.
c.	chapter.
Cas. Dig.	Cassels' Supreme Court of Canada Digest.
C. C. C.	Canadian Criminal Cases.
C. L. Ch.	Common Law Chamber Reports (Ont.).
C. L. J.	Canada Law Journal.
C. L. T.	Canadian Law Times.
Cochran.	Cochran's Reports (N. S.).
Con. Ord.	Consolidated Ordinance.
C. P.	Common Pleas Reports (Ont.).
C. S.	Consolidated Statutes.
C. S. C. R.	Canada Supreme Court Rules.
Dra.	Draper's Reports (Ont.).
Ed.	Edward.
E. & A.	Error and Appeal Reports, Upper Canada.
Elec. Cas.	Election Cases (Ont.).
E. T.	Easter Term.
Ex. C. R.	Exchequer Court of Canada Reports.
Gr.	Grant's Chancery Reports (Ont.).
Han.	Hannay's Reports (N. B.).
Hil. T.	Hilary Term.
Imp.	Imperial.
James	James' Reports (N. S.).
K. B.	King's Bench.
L. J.	Law Journal (Upper Canada).
Man.	Manitoba.
Man. L. R.	Manitoba Law Reports.
M. T.	Michaelmas Term.
N. B.	New Brunswick.
N. B. R.	New Brunswick Reports.
N. S.	Nova Scotia.
N. S. R.	Nova Scotia Reports.
N. S. D.	Nova Scotia Decisions.
N. W. T.	Northwest Territories.
Occ. N.	Occasional Notes (Canadian Law Times).
Old.	Oldright's Reports (N. S.).

TABLE OF ABBREVIATIONS

O. L. R	Ontario Law Reports.
Ont	Ontario.
O. R.	Ontario Reports.
O. W. R.	Ontario Weekly Reporter.
O. S	Old Series.
P. E. I.	Prince Edward Island.
P. & B.	Pugsley and Burbidge's Reports (N. B.).
P. R.	Practice Reports (Ont.).
Pug	Pugsley's Reports (N. B.).
Q. B.	Queen's Bench.
Q. P. R	Quebec Practice Reports.
Q. R. K. B	Quebec Reports, King's Bench.
Q. R. Q. B.	Quebec Reports, Queen's Bench.
Q. S. C. R	Quebec Supreme Court Reports.
Que	Quebec.
R	Rex or Regina.
R. & C.	Russell & Chesley's Reports (N. S.).
R. & G.	Russell & Geldert's Reports (N. S.).
R. S.	Revised Statutes.
R. S. O	Revised Statutes of Ontario.
R. S. C.	Revised Statutes of Canada.
s.	section.
S. C.	Supreme Court.
S. C. C.	Supreme Court of Canada.
S. C. R.	Supreme Court Reports (Canada).
Tay	Taylor's Reports (Ont.).
Ter. L. R.	Territories Law Reports.
Thom.	Thomson's Reports (N. S.).
Trin. T.	Trinity Term.
U. C.	Upper Canada.
U. C. R	Upper Canada Reports.
Vict	Victoria.
W. L. R.	Western Law Reporter.
Y. T.	Yukon Territory.

ADDENDA AND CORRIGENDA

COLUMN.	CORRECTION.
12.	Under "Appeal," sub-heading II., "Deposit on Recognizance," should be "Deposit of Recognizances."
	Sub-heading V., "Lease to," should be "Leave to."
24.	In last line "i" should be "I."
35.	In fourth line from bottom, "Gotteriedson" should be "Gottfriedson."
89.	Last line of Par. 17 should read, "parte Kane, 21 N.B.R. 370."
90.	Last two lines, par. 23, should read, "trial, ex parte Fahey, 21 N.B.R. 392."
141.	Last line par. 21, should read "2 P.R. 287."
220.	Last line par. 119, should read "son Co., Ltd., 2 C.C.C. 272, 28 O.R. 231."
226.	Last line, par. 149 should read "24 C.L.T. Occ. N. 70."
271.	Last line par. 7 should read "Regina v. Bissell, 1 O.R. 514."
325.	In 2nd line, "N" should be "V."
351.	In 34th line, "Peg." should read "Pug."
353.	Last line, par. 2, should read "Levi, 1 C.C.C. 74, Q.R. 6 Q.B. 151."
354.	In last line par. 1, "2" should read "Q."
	In last line, par. 2, "2" should be "Q."
	In last line, par. 3, "2" should be "Q."
364.	In last line, par. 15, "27" should be "29."
366.	In next to last line, "Sparkham" should be "Sparham."
384.	In 8th line add "6 R. & G. 31, 6 C.L.T. 139."
399.	In 24th line, "S.C." should read "R. v. Browne."
	In 4th line from bottom read "8 C.C.C. 251."
420.	In 10th line, "385" should be "165."
430.	The 8th line from bottom should read "8 A.R 135."
431.	In 26th line insert "In re Hall."
570.	In line 33 read "Fouquet."
588.	In line 14 read "Fouquet."
792.	In line 12 read "20 C.P. 246."
830.	In line 8 insert "R. v. Rice."
931.	In line 35 insert "R. v. Little."

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Digest

OF

CANADIAN CRIMINAL CASE LAW

ABDUCTION.

1. **Gist of Offence.**] Prisoner was indicted for having, at the city of Victoria, unlawfully caused to be taken a certain unmarried girl, to wit, one B. R., being under the age of sixteen years, out of the possession and against the will of her father, contrary to s. 283 of the Criminal Code. The evidence shewed that the girl, by persuasion of letter written by the prisoner in Victoria, Canada, addressed to and received by her within the State of Washington, U. S. A., was induced to leave her father's house in that state and meet the prisoner at Victoria. Upon meeting her there he suggested that it was not too late for her to return home, but she declined, and the prisoner thereupon took her to a house near Victoria, where they spent the night together :—Held, per Davie, C.J., at the trial, convicting the prisoner, that the Court had jurisdiction, as the offence was wholly committed within Canada. Upon case stated for the opinion of the Court of Criminal Appeal, Davie, C.J., and Crease, J., affirmed the judgment :—Held, per McCreight, Walkem and Drake, JJ., quashing the conviction : That it was essential to the offence that the girl should have been in the possession of her father at the time of the taking, and that upon the facts, when she met the prisoner at Victoria, she had already abandoned that possession. Per McCreight and Walkem, JJ.: That the reception by the girl of the letters was the motive cause of her abandoning her father's possession, and therefore a material factor in the offence, which consequently, in part, took place outside the jurisdiction. Per Walkem, J.: That the letters so far as they held out the inducement, should not have been admitted in evidence at the trial. REGINA v. BLYTHE, 4 B. C. R. 276. 1. C. C.C. 263.

ABORTION.

1. **Advertising Medicine Intended to Prevent Conception**—EVIDENCE TO SUPPORT. CONVICTION — FUNCTIONS OF JUDGE AND JURY—ACQUITTAL — NEW TRIAL.] — The evidence of the Crown, upon an indictment for an offence against s. 179 [c] of the Criminal Code, shewed that the defendant conducted a large business in various proprietary medicines, including a certain emmenagogue or medicine for stimulating the menstrual flow. This medicine was put up in boxes, in the form of tablets, and sold under the terms of an agreement duly proved, between the defendant and the manufacturer. A box was produced as made up for the purpose of sale, with a brief printed description of the contents on the outside, across which a warning in red ink and large type was printed, not to use the tablets during pregnancy. Inside the box was a printed sheet or circular giving full directions for the use of the tablets; and a separate advertising circular referring to the tablets and describing their purposes and operation was also proved. In the "directions" there was this statement: "Thousands of married ladies are using these tablets monthly. Ladies who have reason to suspect pregnancy are cautioned against using these tablets." The Judge at the trial directed an acquittal, reserving the case for the Crown upon the question whether the evidence offered would support a conviction. A verdict of not guilty was accordingly returned : —Held, that the jury could have legitimately inferred from the language used that the tablets were thereby represented as a means of preventing conception ; and therefore it would have been right to have left the case to the jury ; and a conviction might have been supported. It is for the Judge to determine whether a document is capable

of bearing the meaning assigned to it, and for the jury to say whether under the circumstances, it has that meaning or not. The Court declined to direct a new trial. REX v. KARN, 23 Occ. N. 219, 5. O. L. R. 704, 2 O. W. R. 335.

2. **Conviction for Attempt Upon Evidence Shewing Greater Offences.**]—Upon an indictment charging an abortion and an attempt to commit an abortion, the jury brought in a verdict of guilty of the attempt, and upon an appeal against the verdict, it was held that the jury might convict of the lesser offence where there was evidence, which, if credited, would warrant a conviction for the abortion. THE QUEEN v. HAMILTON, 4 C. C. C. 251.

3. **Intent.**]—The prisoner, with intent to procure abortion supplied a pregnant woman with two bottles full of pills, with directions to take twenty-five at a dose, and that they would have that effect. The pills contained oil of savin, an article used to procure abortion, and it is said that a bottle full 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, that there was a supplying of a noxious thing within the meaning of the Act, 32 and 33 Vict. c. 20, s. 60 [D], with the intent to procure an abortion. REGINA v. Stitt, 30 C. P. 30.

4. **Murder** — EVIDENCE OF CAUSE OF DEATH — INSUFFICIENT POST MORTEM EXAMINATION— EFFECT OF.]—On the trial of the accused for murder, by committing an abortion on a girl, it appeared in evidence th t a post mortem examination of the girl had been made by a medical man, which was, however, confined to the pelvic organs and was, upon the medical evidence, inconclusive as to the cause of death, but there was other evidence pointing to the inference that death was caused by the operation. Davie, C.J., left the case to the jury, but reserved a case for the Court of Criminal Appeal as to whether there was, in point of law, evidence to go to the jury, upon which they might find that the death of the girl resulted from the criminal acts of the accused. The jury found a verdict of guilty :—Held, per McCreight, J. [Davie, C.J., and Walkem, J., concurring], that there is no rule that the cause of death must be proved by post mortem examination, and that there was evidence to go to the jury of the cause of death notwithstanding the absence of a complete post mortem examination. REGINA v. GARROW, 5 B. C. R. 61.

ACCESSORY.

1. **Broker Not Liable as on Speculative Contract in Absence of Mens Rea.**]—A broker is not liable as an accessory under sec. 61 of the Criminal Code where it is not shown that he had any guilty knowledge of the intention of the contracting parties to make profit on the rise and fall in the price of merchandise. REGINA v. DOWD, 4 C. C. C. 170, 17 Q. R. S. C. 67.

2. **Aiding and Abetting** — THEFT—ACCESSORY AT THE FACT—CODE SEC. 61.]—In order to be an aider and abettor it is not necessary that the person who participates in an offence should be present during the commission of some incident constituting the offence ; it is sufficient that he aids and abets while a part of the criminal transaction is taking place, either at its commencement or during its progression, or later but proximately at its consummation, or while some act is being done which may enter into the offence though it might be consummated without it. In case of theft the act of carrying away the stolen property may be continued until it is lodged in a place of safe keeping to be afterwards appropriated to the thief's use ; and although actual taking may be complete as to crime, the carrying the property to a place of safe keeping, may enter into the criminal transaction, and constitute a continuation of its commission. Anyone, therefore, who knowingly assists a thief to conceal stolen property which he is in the actual or proximate act of carrying away renders aid to the principal actor and becomes an accessory at the fact, and can be dealt with as a principal

under sec. 61 of the Code. REGINA v. CAMPBELL, 2 C. C. C. 357.

See also Evidence—Principal.

Accomplice—See Evidence.

ADJOURNMENT.

1. **Adjournment of Court.**] — Where a Circuit Court is adjourned to a future day, in consequence of unfinished civil business, the criminal jurisdiction of the adjourned Court is not confined to the trial of offences committed before the adjournment. REGINA v. JOPE, 3 All. 161 [N.B.R.]

2. **Crown** — POWER OF COURT TO GRANT, ETC.]—Although the Crown elects to proceed with a speedy trial in the absence of a material witness, and although the trial has commenced, the Court has power to grant an adjournment to enable the Crown to get the witness. REGINA v. GORDON, 6 B. C. R. 160, 2 C. C. C. 141.

3. **Illness of Witness** — REMOVAL OF COURT AND JURY—JURISDICTION.]—Where a witness is too ill to attend trial, the Judge has power to order the removal of the Court and Jury to any place within the County, on consent of both Counsels. The accused is bound by the consent given by his counsel as it is not a matter which goes to jurisdiction. R. v. RODGERS, 6 C. C. C. 419, 36 N. B. R. 1.

4. **Speedy Trials Act** — 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.

5. **Summary Offences** — SUMMONS NOT HEARD AT TIME APPOINTED—NECESSITY OF ACCUSED TO WAIT.]—Where delay is caused in hearing the summons on a summary offence, the accused must wait a reasonable time. REX v. WIPPER, 5 C. C. C. 17.

6. **Summary Proceedings**—MAGISTRATE ADJOURNING CASE SINE DIE — JURISDICTION TO CONVICT.]—An adjournment sine die made by a justice or magistrate without a day being named on which judgment was to be delivered, renders any further proceeding nugatory, and a conviction afterwards made in the absence of the accused is absolutely void for want of jurisdiction. REGINA v. QUINN, 2 C. C. C. 153, 28 O. R. 224.

7. **Time**—EIGHT DAYS.] — The eight days mentioned in Criminal Code sec. 857 [I] should be computed from and exclusive of the day of the adjournment. REGINA v. COLLINS, 14 Ont. R. 613.

ADDRESS OF COUNSEL.

Right of Reply—See Trial.

ADMINISTRATION OF JUSTICE.

1. **Constable's Services and Expenses.**]—The gist of s. 12 of R. S. O. 1897 c. 101, is to empower a warden and county attorney to authorize any constable or other person to perform special services not covered by the ordinary tariff, which are in their opinion necessary for the detection of crime or the capture of persons believed to have committed serious crimes, and to do so upon the credit of the county, and so to render the county liable for the payment for such special services, and that whether the account is certified by the warden or county attorney as required by the said section or not. SILLS v. COUNTIES OF LENNOX AND ADDINGTON, 31 O. R. 512.

2. **Expenses of Administration of Criminal Justice.**]—The liability of the Crown for payment of expenses connected with the administration of criminal justice in the Province out of the consolidated revenue fund is restricted, under R. S. O. 1877 c. 86, s. 1, to such expenses as are mentioned in the schedule to the Act; and the county, under R. S. O. 1877 c. 85, is required to pay all other proper expenses connected therewith. Re FENTON and the BOARD OF AUDIT OF THE COUNTY OF YORK. 31 U. C. C. P. 31.

AGENCY.

1. **Indian Act**—CLERK, SERVANT OR AGENT—HOTEL COOK.—An hotel cook is not a clerk, servant or agent within the Indian Act, so as to render the hotel-keeper liable for the sale without his

knowledge, of liquor to an Indian. REX v. MICHAEL GEE, 5 C. C. C. 148.

2. **Theft by Agent.**—TERMS ON WHICH MONEY RECEIVED — CRIMINAL CODE, SEC. 308.]—It is not necessary on a charge of fraudulent conversion by an agent of money received by him on his principal's account, to prove any terms as to accounting or paying the same to the principal. Sec. 308 [2] Criminal Code refers to the terms on which the money was held by the agent when he has received it. REGINA v. UNGER, 5 C. C. C. 270, 14 C. L. T. Occ. N. 294.

ALIBI.

1. **Onus of Proof** —MISDIRECTION.]—Where the defence to a criminal charge is an alibi it is misdirection to tell the jury that the onus is on the prisoner to prove it to their entire satisfaction, and to show beyond all question or reason that he could not have been present at the commission of the crime. REX v. MYSHRALL, 35 N. B. R. 507, 8 C. C. C. 474.

ALIENS.

1. **Consent of Judge**—OBJECT OF ACT—POLICE MAGISTRATE NOT A PERSONA DESIGNATA — STATED CASE.] — 1. The purpose of the Act in requiring the consent of a Judge to bring the prosecution was doubtless to prevent frivolous complaints being laid, and to determine such, the Judge giving consent should be informed of the facts, including the names of the persons concerning whom an infraction of the Act has been committed. 2. The written consent should contain a statement of the offence alleged, not necessarily in technical form, but mentioning the name of the person in respect of whom the offence is alleged to have been committed, and the time and place, with sufficient certainty to identify the offence intended to be charged. REGINA v. BRECKENRIDGE, 10 C. C. C. 180, 10 O. L. R. 459, 6 O. W. R. 501.

2. **Alien Labor Act** — IMPORTATION.] — 1. The offence of importing aliens under a contract to do work in Canada is a new offence created by Statute, and it is an essential element in the offence that it shall be done knowingly. Where the information or conviction omitted to charge that the offence was done knowingly the conviction is bad ; and such omission is not an irregularity, informality, or insufficiency curable under Sec. 889 of the Criminal Code. It is a matter of substance. Where the alleged alien was born in the United States, but whose parents were Canadians, and there is no evidence that either the parents or the son were naturalized citizens of the United States, the presumption is that the parents are British subjects and also the son. REGINA v. HAYES, 6 C. C. C. 357, 5 O. L. R. 198, 123 Occ. N. 88, 2 O. W. R. 123.

ADULTERY.

1. **Married Man.**]—A married man may be convicted of adultery under Revised Statutes c. 145, though the offence is committed with an unmarried woman. REGINA v. EGRE, 1 P. & B. 189 [N.B.R.]

ADVERTISEMENT.

1. **Construction of Intention** — DRUG FOR PROCURING A MISCARRIAGE — ERRONEOUS DIRECTION OF JUDGE.]—In the construction of an advertisement advertising a drug liable to procure a miscarriage the question of the implied representation implied in it, resolves itself into a question for the Judge to determine whether it is capable of the meaning assigned to it, and for the jury to say if under all the circumstances it does in fact bear that meaning or not. Re KARN, 6 C. C. C. 479, 5 O. R. 704.

ALTERNATIVE OFFENCES.

1. **Alternative Penalties**—ENFORCEMENT OF FINE—872.]—Defendant was found guilty under Code 501 of wilfully killing a dog, and sentenced under that section to pay a fine, or in default thereof, to imprisonment with hard labor :—Held, the conviction was bad. Under that section of the Code, either fine or imprisonment might be awarded, but not both, nor might the fine be enforced by imprisonment, for which purpose the magistrate should have had recourse to 872 [b], which deals with the enforcement

of fines. Undertaking not to prosecute imposed as a condition. No costs. REGINA v. HORTON, 31 N. S. R. 217.

2. **Summary Trial** — JURISDICTION — PLACE OF IMPRISONMENT.]—On application to discharge the defendant upon a writ of habeas corpus, it appeared that he was tried before the stipendiary magistrate for the city of Halifax, under the provisions of the Code relating to summary trials, and was convicted of the offence of stealing a quantity of whisky, of the value of $9, "in and from a certain railway building," and was adjudged, for his said offence, to be imprisoned in the city prison, in the said city of Halifax, for the space of nine months. Under the Code, s. 351, every one is guilty of an indictable offence, and liable to fourteen years imprisonment, who steals anything in or from any railway station, or building, etc.:—Held, that there was but one crime charged, and that the place of detention was a proper place within the meaning of the law; Weatherbe J., and Graham, E. J., dissenting. REX v. WHITE, 21 Occ. N. 310, 34 N. S. Reps. 436.

AMENDMENT.

1. **Coroner's Warrant.**—Of coroner's warrant on habeas corpus. In re CARMICHAEL, 10 L. J. 325.

2. **Of Conviction.**] — REGINA v. ROSS, H. T. 4 Vict.; In re WATTS, in re EMERY, 5 P. R. 267.

3. **Conviction**—NOT APPLICABLE TO UNAUTHORIZED CONVICTIONS ON SUMMARY TRIAL.] — The provisions of the Code respecting amendment of conviction and commitment in cases of summary convictions do not apply to cases of summary trial. THE QUEEN v. RANDOLPH, 4 C.C.C. 165, 32 O. R. 212.

4. **Of Indictment.**] — CORNWALL v. REGINA, 33 U. C. R. 106; REGINA v. JACKSON, 19 C. P. 280.

5. **Indictment** — PREFERRING NEW CHARGE FROM THAT IN COMMITMENT—CODE SECTIONS 641-673.]—Prisoner was charged before a magistrate with stealing 2200 bushels of beans the property of one Stevens, and was committed for trial on that charge. At the assizes an indictment was preferred not for stealing but for obtaining from the prosecutor by false pretences two cheques, the false pretence being "that there was then a large quantity of beans, to wit 2680 bushels, the property of said Stevens," etc. A motion to quash was made at the trial and refused. An amendment was allowed by striking out the words "a large quantity of beans to wit": Held, on a case reserved—that the indictment for false pretences would lie, notwithstanding that the commitment was on a charge of theft, where, as in this case, the evidence at the preliminary hearing and at the trial, sustained a charge of false pretences; that the amendment was properly allowed, since the addition of the words struck out, merely operated as unnecessarily setting out in what the false pretences consisted, and could not therefore render the indictment liable to be quashed as contrary to the provisions of sec. 641, that on the question of prejudice, it must be taken that the trial Judge was of the opinion that the defence was not misled or prejudiced by the variance between the evidence given and the charge in the indictment, and the question was therefore not open on the case reserved; that in any event, on the material, there was no evidence of prejudice. REX v. PATTERSON, 2 C. C. C. 339, 26 O. R. 656.

6. **Indictment** — TERMS.] — An indictment, framed under the 147th section of the Insolvent Act of 1869, omitted the words "with intent to defraud his creditors." Defendant pleaded to the indictment, but afterwards applied for leave to withdraw his plea and demur, but the Judge decided that, if he allowed this he should also permit the prosecutor to amend the indictment by inserting those words. REGINA v. MCLEAN, I. P. & B. 377 [N.B.R.]

7. **Indictment**—MOTION TO QUASH—OMISSION OF ESSENTIAL INGREDIENT.]—Where the motion to quash is for a formal defect the Court may order an amendment, but when the motion is founded on the total absence of a necessary and material ingredient, so that the indictment charges no offence in law, it must be set aside and quashed. In such case, however, a new bill may be preferred. Defects in matters of substance

are not amendable ; for the reason that if there is an omission of the averment of an essential ingredient, without which there is no offence known to law, charged against the defendant, then there is no indictment at all, and nothing to amend ; the only thing to be done is to quash the defective document. R. v. CAMERON, 2 C. C. C. 175.

8. **Information.**]—Of information before a magistrate. In re CONKLIN, 31 U. C. R. 160.

9. **Magistrate's Power to Revise Minute of Conviction.**]—Where the original conviction imposed imprisonment with hard labor when the statute only authorized imprisonment without hard labor, the magistrate upon a return to a certiorari, has the right to omit an error made in the original minute of adjudication. THE QUEEN v. WHIFFEN, 4 C. C. C. 141 [N.W.T.]

10. **Return to Certiorari.**]—Semble that if material evidence be given before a magistrate but unintentionally omitted from a return to a certiorari, an amendment may be allowed to supply it, but only with the concurrence of the parties and of the witness by whom the deposition was signed in the correctness of the additions ; but it cannot be supplied by affidavit. REGINA v. MCNANCY, 5 P. R. 438.

11. **Summary Proceedings Before Justices of the Peace.**]—2 Edw. VII., ch. 12, sec. 15, [6] making the provisions of the Code respecting amendment of proceedings before justices of the peace applicable to all cases of prosecutions under Provincial Act, is only intended to apply to summary proceedings before justices of the peace, and not to proceedings under the Liquor Act of 1902. REX v. FOSTER, 7 C. C. C. 46, 5 O. L. R. 624.

12. **Summary Trial.**]—The provisions of the Code respecting amendment do not apply to summary trials. REGINA v. RANDOLPH, 32 O. R. 212.

See also APPEAL — CERTIORARI — INFORMATION — CONVICTION — INDICTMENT.

ANIMALS.

1. **Contagious Diseases** — SELLING — MENS REA — ANIMALS' CONTAGIOUS DISEASES ACT 1903.]—It is not necessary to prove that the defendant had knowledge that the animals were affected in order to support a conviction under the Animals' Contagious Diseases Act, 1903 [Dom.], sec. 7. Where upon re-examination of a witness for the prosecution, a justice allows new matter to be opened up, the defendant might be prejudiced if he is not accorded the privilege of cross-examination. This, however, should be applied for. R. v. PERRAS, 9 C. C. C. 364. [N. W. Terr., 1904.]

APPEAL.

I. COSTS.
II. DEPOSIT ON RECOGNIZANCE.
III. EVIDENCE.
IV. JURISDICTION.
V. LEASE TO.
VI. NOTICE OF.
VII. RIGHT OF.
VIII. SUPREME COURT OF CANADA.
IX. TIME.
X. WAIVER.
XI. MISCELLANEOUS.

I. COSTS.

1. **Summary Conviction** — CODE SEC. 879-880.]—The discretion of a Judge in fixing costs under sections 879 and 880 of the Criminal Code is absolute and will not be reviewed. The sections apply also to proceedings under the Act respecting frauds in cheese factories, 52 Vict. c. 43, save as modified or interfered with by sec. 9 of said Act. R. v. MCINTOSH, 2 C. C. C. 115, 28 O. R. 603.

2. **Power to Award.**]—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. REGINA v. STARKEY, 7 Man. L. R. 262.

3. **Where Dismissed Through Defect in Notice of Appeal** — CODE SEC. 884.]—No costs are allowable under Code Sec. 884 where an appeal has been dismissed through a defect in the notice of appeal. R. v. AH YIN, [No. 2], 6 C. C. C. 66.

II. Deposit or Recognizance.

1. **Case Stated.**]—The recognizance required by s. 900, s.-s. 4 of the Criminal Code, is a condition precedent to the jurisdiction of the Court to hear the appeal, and no substitute therefor is permissible. Rex v. Geiser, 8 B. C. R. 169.

2. **Failure to Deposit in Time.**] — The accused gave notice of appeal but did not deposit the requisite deposit in lieu of recognizance, until the 18th day of June, though a Court at which the appeal might have been heard sat on June 5th at which the appellant did not appear. Held, that the deposit was too late, and the appeal could not be heard. McShadden v. Lachance, 5 C. C. C. 43.

3. **Failure to Return Deposit to Court Appealed to** (Ont.) — Affidavit.]—Before an appeal from a conviction before a magistrate can be heard, the deposit made to the magistrate in lieu of recognizance must be returned into Court and whatever has been done is not provable by affidavit. Regina v. Gray, 5 C. C. C. 24.

4. **Only One Surety. Appeal from Summary Conviction.**]—Where several defendants appealed under sec. 880 of the Criminal Code from a summary Conviction and the recognizance was only given with one surety instead of two as prescribed, the appeal was quashed. The Queen v. Joseph et al., 4 C.C.C. 126, Q. R. 21 S. C. 211.

5. **Marked Cheque** — Crim. Code s. 900 s.-s. 4.]—A marked cheque is not compliance with Crim. Code sec. 900 s.-s. 4 and the Crown Rules (B. C.) which require the appellant in every instance to enter into recogizance to prosecute appeal. Rex v. Geiser, 5 C. C. C. 154, 8 B. C. R. 169.

6. **Summary Convictions Act** (B.C.).]—The recognizance required by s. 71 [c] of the Summary Convictions Act [Provincial] must be entered into before the appeal can be entered for trial. Regina v. King, 7 B. C. R. 401.

III. Evidence.

1. **Improper Admission of Evidence** — Effect of.]—Under s. 746 of the Code, the improper admission of evidence at a criminal trial cannot be said in itself necessarily to constitute a wrong or miscarriage, but it is a question for the Court, upon hearing of any appeal, whether in the particular case it did so or not. Makin v. A. G. for N. S. W. (1894), A. C. 57, distinguished. Regina v. James Woods, 5 B. C. R. 585.

2. **Miscarriage or Substantial Wrong** — Improper Admission of Evidence — Code Sec. 744-746.]—Under Code sec. 746 the improper admission of evidence at a criminal trial cannot be said in itself necessarily to constitute a wrong or miscarriage, but it is a question for the Court upon hearing of any appeal whether it did so or not. R. v. Woods, 5 B. C. R. 585, 2 C. C. C. 159.

3. **Weight of Evidence.**]—A finding of "guilty" will not be set aside upon appeal if there is any evidence to support the verdict. Regina v. Riel, 2 Man. L. R. 321.

4. **Weight of Evidence.**]—A conviction will not be quashed upon the weight of evidence merely. Semble, a joint conviction against two members of a firm for a breach of the statute is bad. Reg. v. Gannis, Reg. v. Nevins, Reg. v. Lyons, Reg. v. Ferguson, Reg. v. Adams & Jackson, 5 Man. L. R. 153.

5. **Weight of Evidence** — Abuse of Process.]—L. was convicted before three justices of the peace of receiving stolen goods, viz., one bedstead, knowing the same to be stolen. The bedstead was of about the value of $1.25. He took it openly, and in the daytime, from a room occupied by himself until then. This room was opposite one in which the prosecutor was at the time. He asked one G., to assist him in taking it to pieces for the purpose of removing it. It was left at the door outside, before it was placed on the wagon, at the bottom of the load, but it did not appear whether he saw it. When questioned about it afterwards by the prosecutor, L. admitted having it in his possession, but claimed that it was his property. When convicted and threatened with imprisonment, he was induced, in consideration of not being sent to gaol, to agree in writing to return the bedstead within 48 hours, to pay all costs of the Court, and $50 damages, and not to appeal against the conviction. He returned the bedstead within the time agreed upon. On motion to quash the

conviction :—Held, that the conviction must be quashed, there being no evidence of any felonious intent, on the part of L. in anything he did. Held, also, that the whole proceedings, arrest, trial and conviction, were a gross abuse of criminal process for the purpose of obtaining an undue advantage in a most trivial matter. The private prosecutor was ordered to pay the costs. The conduct of the Justices in being parties to such an outrageous agreement commented on. REGINA v. KENNEDY, 10 O. R. 398, approved. REGINA v. LACOURSIERE, 8 Man. L. R. 198.

6. **Weight of Evidence.**]—Where there is any evidence in support of a conviction, the finding of the magistrate will not be interfered with, although the evidence may not be satisfactory in the opinion of the Court. REGINA v. GRANNIS, 5 M.L R. 153, REGINA v. HERRELL, 12 Man. L. R. 198.

IV. JURISDICTION.

1. **County Court** — FINALITY OF DECISION ON.]—The decision of the County Court in appeal from a summary conviction is final and conclusive, and a Supreme Court Judge has no jurisdiction to interfere by habeas corpus. REX v. BEAMISH, 8 B. C. R. 171.

2. **Certiorari** — APPROPRIATE REMEDY.] —In a case in which there has been inadequate service, or any want of jurisdiction, certiorari and not appeal is the appropriate remedy. Re RUGGLES, 5 C. C. C. 163, 35 N. S. R. 57.

3. **Certiorari** — HIGH COURT — JURISDICTION OF WEEKLY COURT.]—The weekly Court [Ont.] has no jurisdiction to set aside an ex parte order made in a certiorari proceeding by a Judge in the High Court of Ontario; the proper forum being the High Court in banc. REGINA v. GRAHAM, 1 C. C. C. 405, 29 O. R. 193.

4. **Court of Queen's Bench (Man.)**—APPEAL TO ASSIZES.]—The Court of Queen's Bench at its sittings of Assize and nisi prius is the proper tribunal to hear appeals against convictions and orders of justices of the peace. BOSE v. MORRIS, T. W. 368 [Man.]

5. **Divisional Court.**]—No appeal lies to a Divisional Court from an order appointing commissioners to take evidence under s. 23, s.-s. 2, of the Criminal Law Amendment Act, 1890. REGINA v. JOHNSON, ET AL., 2 B. C. R. 87.

6. **Divisional Court** — JURISDICTION OF —REVIEWING EVIDENCE.]—The Divisional Court cannot review the decision of the Judicial officer having jurisdiction to hear extradition cases upon the weight of evidence. In re WEIR, 14 O. R. 380.

7. **Power to Expedite** — TERRITORIAL ORDINANCE.]—Where notice of appeal has been given from a conviction by a magistrate, for a contravention of the Liquor License Ordinance of the North-West Territories [1901 cap. 33, sec. 21], the Judge who is to preside at the sittings of the Court appealed to may on application of the Attorney-General expedite the hearing of the appeal, such power not being inconsistent with sec. 879 of the Criminal Code. R. v. MCLEOD, 6 C. C. C. 97, 5 Terr. L. R. 245.

8. **Powers of Manitoba Court** — HABEAS CORPUS — PRESENCE OF THE PRISONER —PRODUCTION OF RECORD.)—The Court of Queen's Bench for Manitoba has no power to send a habeas corpus beyond the limits of Manitoba, and the North-West Territories Acts have not extended its power in this respect. That Court will hear an appeal in the absence of the prisoner. Upon such an appeal the original papers should be produced; but if the prisoner cannot procure them the Court will not act on sworn or certified copies. THE QUEEN v. RIEL [No. 1], 1 Terr. L. R. 20.

9. **Re-Opening After Conviction on a Plea of Guilty** — OBJECTION AS TO JURISDICTION.]—After a conviction has been entered on a plea of guilty, the Court has no power to re-open the hearing on the merits which would be tantamount to allowing the defendant to withdraw his plea of guilty; and the case will not be reviewed on appeal for the purpose of revising the punishment imposed, unless the magistrate exercised his discretion improperly and oppressively. When a conviction has been entered under the Summary Convictions Act of B. C., any objections that the by-law under which the conviction was made is ultra vires, is

not open to be raised on appeal, unless it was raised on the hearing before the magistrate. R. v. BOWMAN, 6 B. C. R. 271, 2 C. C. C. 89.

10. **Single Judge** — FULL COURT — NOTICE OF MOTION.]—An application to quash a conviction under sec. 337 of the Crim. Code must be made to the Full Court and not to a Single Judge. The Provincial Legislature, having authority to make laws respecting criminal procedure, the practice introduced by the Queen's Bench Act, 1895, rule 162, cannot apply to proceedings under the Crim. Code. RE BOUCHER, 4 A. R. 191, and REG. v. MCAULAY, 14 O. R. 643 followed. Held, also, that such an application must be made by summons or rule nisi and not by notice of motion, and that in the rule for the certiorari the grounds for moving must be specified. REGINA v. BEALE, II. Man. L. R. 448.

11. **Summary Trial by Consent** — CRIM. CODE SEC. 783 AND 808 — RIGHT OF APPEAL.]—An appeal does not lie from the conviction of a prisoner of theft under section 783 (a) by a police magistrate who tries summarily with consent of the accused. REGINA v. EGAN, I. C. C. C. 112, II. Man. L. R. 134.

V. LEAVE TO.

1. **Leave to Appeal from Order of Divisional Court.**]—On an application for leave to appeal to the Court of Appeal from the judgment of the Divisional Court, affirming a conviction under the Loan Corporations Act, R. S. O. 1897, c. 205. Held, The order of the Divisional Court was final. R. v. PIERCE (No. 2), 10 C. C. C. 177, 10 O. L. R. 297.

2. **Leave to Appeal** — RESERVED CASE — GROUNDS FOR — CODE SECS. 744-747.] —1. It is no ground for appeal that one of the jurors was not indifferent, but was prejudiced against the prisoner, as it is not a question of law but of fact ; nor that the verdict was the result of an arrangement between the jurors, as that also is a question of fact and not law. 2. The Court of Appeal on a motion for leave to appeal refused to entertain as a ground of appeal that the verdict was given in the absence of proof of the existence of a conspiracy, as assuming it to be a question of law, no application was made to the trial Judge to reserve such for the opinion of the Court of Appeal. 3. Right of appeal under the Code is explicitly set out in secs. 742, 743, 744-747. R. v. CARLIN, 6 C. C. C. 507, Q. R. 12 K. B. 483.

3. **Perjury** — CORROBORATIVE EVIDENCE.]—The fact that a magistrate rejects testimony tendered as corroborative on a charge of perjury does not of itself warrant the granting of a leave to appeal even if the Court of Appeal may think the magistrate was wrong in rejecting such evidence. REX v. BURNS, 4 C. C. C. 323, 1 O. R. 336.

4. **Privy Council** — PRIOR TO CODE.]—The rule of the Privy Council 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. RIEL v. THE QUEEN, 10 Ont. App. C. 675.

5. **Privy Council** — WHERE SIMILAR APPEAL PENDING.]—The Court will not, except under special circumstances, grant leave to appeal to the Judicial Committee of the Privy Council on the question of the constitutionality of a local statute, when the point or matter is under appeal at the time to the Privy Council, in a civil action, though not between the same parties. R. v. LITTLE, 6 B. C. R. 321, 2 C. C. C. 240.

VI. NOTICE OF APPEAL.

1. **Failure to Serve Prosecutor.**] — A notice of appeal from a summary conviction [B.C.] served upon the convicting magistrate is not invalid because it is not also addressed to, and served upon the prosecutor. It is not a pre-requisite to the right of appeal that the person convicted should have been taken into custody :—Quaere, whether service of notice of appeal on prosecutor's solicitor would not be sufficient in any event. REX v. JORDAN, 5C. C. C. 438, 9 B. C. R. 33.

2. **Description of Offence** — SUFFICIENCY OF.]—A notice of appeal from a conviction for playing in a common gaming house, which describes the offence for which the appellant was convicted as

"looking on while another was playing in a common gaming house," is insufficient. REX v. MAH YIN, 9 B. C. R. 319.

3. **Locus Standi of Society** — SERVICE OF NOTICE.]—An agent acting for a society in a prosecution before Justices is the proper party to appeal against a certificate of dismissal, the society having no locus standi. Notice of appeal must be served on the respondent or the Justices for him. CANADIAN SOCIETY v. LAUZON, 4 C. C. C. 354.

4. **Necessary Requisites** — GAMING — CODE SEC. 199.]—A notice of appeal from a summary conviction is a sufficient compliance with the statute if it is similar to the form provided in the statute; its office is to inform the respondent that some particular conviction is appealed against, and care should be taken not to mislead; the notice should therefore contain the names of the appellants, the intent to appeal, the sessions to which appeal is made, and the nature of the conviction itself. Notices, however, should not be critically construed, and if they substantially give the requisite information they will, apart from the statutory provision, be held sufficient. A notice of appeal from a conviction for playing in a common gaming house which set out that the accused was convicted for "looking on": —Held, defective. R. v. AH YIN, 6 C. C. C. 63.

5. **Notice of Appeal** — SERVICE OF.]—A notice of appeal from a summary conviction [Provincial], served upon the convicting magistrate, is not invalid because it is not also addressed to and served upon the respondent. It is not a pre-requisite to the right of appeal that the person convicted should have been taken into custody:—Quære, whether service of notice of appeal on respondents' solicitor would not be sufficient in any event. REX v. JORDAN, 9 B. C. R. 33.

6. **Summary Conviction** — OMISSION OF NAME OF MAGISTRATE.]—A notice of appeal from a summary conviction served on the convicting magistrates but not addressed to them by name is sufficient. REX v. JACK, 5 C. C. C. 160.

7. **Summary Conviction** — FAILURE TO SERVE PROSECUTOR WITH NOTICE OF APPEAL.]—It is necessary to serve the prosecutor personally with notice of appeal from a summary conviction before two justices of the peace, and on failure to prove such service the appeal is quashed. HOSTETTER v. THOMAS, 5 C. C. C. 10, 4 Terr. L. R. 224.

8. **Summary Conviction** — NO ADDRESS] —A notice of appeal from a summary conviction not addressed to any person is insufficient to give jurisdiction, sec. 880 of the Code, providing that the appellant shall give to the respondent, or to the justice who tried the case for him, a notice in writing in the form prescribed. CRAGG v. LAMARSH, 4 C. C. C. 246.

9. **Time of Hearing Omitted in** — SUMMARY CONVICTION — CODE SEC. 880.]— A notice of appeal from a summary conviction did not state to the next sittings of the Judge, or in any way specify when the appeal was to be heard. Held, that the notice was invalid. R. v. BRIMACOMBE, 10 C. C. C. 168.

10. **Want of Signature** — VALIDITY OF —CODE SEC. 982.]—A notice of appeal in type writing is a sufficient notice under sec. 880 of the Code; and where the signature to the notice was inadvertently omitted, and the notice was unsigned, it was held to be valid, as being a notice in "form to the like effect" as form N. N. N. of the Code and is validated by sec. 982. R. v. BRYSON, 10 C. C. C. 398.

VII. RIGHT OF APPEAL.

1. **Crim. Code Sec. 879** — FISHERIES ACT.]—The Fisheries Act R. S. C. c. 95 provides for an appeal to the Minister of Marine and Fisheries (s. 18, s.-s. 6). Held that this does not take away the general right of appeal under Crim. Code c. 879. REX v. TOWNSEND, 5 C. C. C. 143, 35 N. S. R. 401.

2. **Disorderly House** — RECORDER.]— There is no right of appeal against a conviction for keeping a disorderly house by a recorder under the Summary Trial provisions of Part LV. of the Code. REGINA v. BOUGIE, 3 C. C. C. 487.

3. **Essentials to** — FROM SUMMARY CONVICTION.]—On an appeal from a sum-

mary conviction to the County Court under the B. C. Summary Convictions Act, the requirements of the Statute were held unfulfilled where the recognizance was entered into on the day the Appellate Court sat. THE QUEEN v. KING, 4 C. C. C. 128, 9 B. C. R. 401.

4. **From County Court**—CASE RESERVED.]—There is no appeal to the Supreme Court from criminal trials before the County Court Judge but by way of a case reserved, and that Judge cannot reserve a case or submit any question depending on the facts or the weight of evidence, which must be decided by him alone taking the place of a jury. Semble, unless the Attorney-General shall consent. REGINA v. MCINTYRE, 31 N. S. R. 422.

5. **From Magistrates** — MANDAMUS TO COMPEL TAKING OF RECOGNIZANCE.]—The first clause of sec. 808 of the Crim. Code, 1872, should be read as if it were framed thus: "The provision of this Act relating to preliminary inquiries before Justices except as mentioned in sec. 804 and 805, and the provisions of Part LVIII., shall not apply to any proceedings under this part," and, so construed, it prevents an appeal from the decision of a police magistrate on a summary trial under Part LV. of the Code. Held, accordingly, that a mandamus to compel a magistrate to take a recognizance on an appeal from a conviction for theft under section 783, sub-sec. [a] of the Code should be refused. REGINA v. EGAN, 11. Man. L. R. 134.

6. **Jurisdiction of County Court Judge** — NECESSITY OF HEARING EVIDENCE ON APPEAL — MANDAMUS.]—On appeal from a conviction made under the Summary Convictions Act [B.C.], the conviction was bad on the face of it, and on a motion the learned Judge quashed the conviction without hearing evidence, though by an amendment to the above Act (1901), similar in terms to Crim. Code Sec. 883, it was provided that in case of appeal the Court shall hear and determine the charge upon the merits, notwithstanding any defect in the conviction. On an application for a mandamus, it was held the Court had no power to interfere by mandamus, there having been a decision by the County Court Judge on the legal merits. STRANGE v. GELLATLY, 8 C. C. C. 17, 24 C. L. T. Occ. N. 199.

7. **Liquor License Ordinance** — N. W. T. — AFFIDAVIT OF MERITS — CODE SEC. 880-881.]—By chap. 32 Consolidated Ordinances of the North-West Territories, sec. 8, a right of appeal is given which enacts that except it be otherwise specially provided, all the provisions of Part LVIII., of the Criminal Code, shall apply to all proceedings before justices of the peace under any ordinance. In 1900 an amendment was made requiring an affidavit by the appellant on the merits to the effect that he did not himself or by his agent commit the offence charged in the information. Since the right of appeal must be given by express enactment, all statutory requirements must be accurately fulfilled, and in this case the appellant not having filed the affidavit required by the amended ordinance, held the appeal could not lie R. v. MCLEOD, 6 C. C. C. 23, 5 Terr. L. R. 245.

8. **Public Health** — CONVICTION UNDER BY-LAW IN SCHEDULE.]—Where there is a conviction for an offence under the by-law set out in the schedule to the Public Health Act, R. S. O. 1887, c. 205, as distinguished from any of the provisions in the Act itself an appeal will lie from such conviction to the sessions notwithstanding s. 112, which has no application. REGINA v. COURSEY, 26 O. R. 685.

9. **Refusal to Reserve a Case** — QUESTIONS OF LAW NOT ARISING UPON THE RECORD.]—G. was indicted for "assault with intent to murder." At the trial certain evidence was tendered for the Crown, which the prisoner's counsel objected to as inadmissible. The evidence was admitted, and the prisoner's counsel then applied to have a case reserved. The learned Judge refused the application. The prisoner obtained a writ of error. Held, that a writ of error does not lie upon such refusal, and that sec. 266 of the Crim. Procedure Act of Canada is a restriction and not an enlargement of the common law scope of writs of error. REGINA v. GILROY, 7 Man. L. R. 54.

10. **Review**—WEIGHT OF EVIDENCE.]—A commitment cannot be quashed where the magistrate had such evidence before him as would warrant him in committing. REGINA v. SHAW, 4 Man. L. R. 404.

11. **Right of** — SUMMARY TRIAL BEFORE TWO JUSTICES.]—An appeal lies from the

decision of two justices of the peace exercising the powers of a magistrate under Criminal Code sec. 782 [a. 3] and 782 [a. 5] in cases of summary trial for theft under $10, under sec. 783 even though the jurisdiction of the magistrate is absolute by sec. 784 [3] without the consent of the accused. REGINA v. WIRTH & REED, 1 C. C. C. 231, 5 B. C. R. 114.

12. **Summary Convictions Act (B. C.)** — TRANSMISSION OF SPECIAL CASE TO REGISTRY — CONDITION PRECEDENT.]—It is a condition precedent to the hearing of an appeal by way of case stated under the B. C. Summary Convictions Act that the case be transmitted to the proper Registry [sec. 86] and on it appearing that this had not been done, the Court refused to hear the appeal. COOKSLEY v. NAGASHIBA, 5 C. C. C. 111., 8 B. C. R. 117.

13. **Summary Conviction (Ont.)**]—There is no appeal to the Court of General Sessions of the peace from an order of dismissal of a complaint for an offence against a city by-law passed under the authority of s. 551 of the Municipal Act, R. S. O. 1897, c. 223. The "order" referred to in s. 7 of R. S. O. 1897, c. 90, " The Ontario Summary Convictions Act" means an order against the party against whom the information and complaint is laid, and does not include an order of dismissal. REGINA v. TORONTO PUBLIC SCHOOL BOARD, 31 O. R. 457.

14. **Summary Conviction** — UNDER PROVINCIAL STATUTE — CODE Sec. 879.]—Under sec. 879 of the Criminal Code an appeal is given in the Province of Quebec to any person convicted by a magistrate under provisions relating to summary convictions. Such appeal is to the Crown side of the Court of Queen's Bench. This applies, however, by sec. 840 to offences within the jurisdiction of the Dominion Parliament only, and not offences or matters the subjects of Provincial enactments. LECOURS v. HURTUBISE, 2 C. C. C. 521, Q. R. 8 Q. B. 439.

15. **Summary Trial of Indictable Offence.**]—There is no right of appeal given in the case of the summary trial of a person charged with the commission of an indictable offence before one of the magistrates or functionaries mentioned in sub-paragraph [1] of paragraph [a] of section 782 of the Code. THE QUEEN v. RACINE, 3 C. C. C. 446, Q. R. 9 Q. B. 134.

VIII. SUPREME COURT OF CANADA.

1. **Leave to Appeal to Supreme Court of Canada** — CONTROL OF OFFICERS OF COURT.]—Where by Act of Parliament special leave to appeal to the Supreme Court of Canada is required either by the Court of Appeal of the Province or of the Supreme Court itself, special reasons must be advanced other than the general one that the Court below erred in its judgment. The control of the Provincial Courts of Justice over their own records and officers should not, as a general rule, be interfered with by the Supreme Court. ATTORNEY-GENERAL v. SCULLY, 6 C. C. C. 381, 33 S. C. R. 16.

2. **Prohibition** — COURT OF KING'S BENCH, QUEBEC — APPEAL TO SUPREME COURT OF CANADA — EXTRADITION COMMISSIONER — APPOINTMENT OF.]—There is a right of appeal to the Supreme Court of Canada, from a decision of the Court of King's Bench of Quebec, affirming the refusal of a Judge to grant a writ of prohibition to compel an Extradition Commissioner to desist with an extradition inquiry, where the commissioner was appointed by federal authority. RE GAYNOR AND GREENE (No. 7), 9 C. C. C. 492.

3. **Supreme Court.**]—The only appellate power conferred on the supreme court in criminal cases is by s. 49 of the Supreme and Exchequer Courts Act which limits appeals in criminal cases to those of the highest importance, and does not impose on the Court the duty of revisal in matter of fact of all summary convictions before magistrates. IN RE TREPANIER, 12 S. C. R. 111.

4. **Supreme Court.**]—Since the passing of 32 and 33 Vict. c. 29, s. 80 [D], repealing so much of c. 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. c. 36 [D], repealing s. 63 of c. 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 sec. 38 and 49 of 38 Vict. c. 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. LALIBERTE v. THE QUEEN, 1 S. C. R. 117.

5. **Supreme Court.**]—Where the court appealed from has affirmed the refusal to reserve a case moved for at a criminal trial on two grounds, and is unanimous as to one of such grounds but not as to the other, the supreme court on appeal can only take into consideration the ground of motion in which there was dissent. McIntosh v. The Queen, 23 S. C. R. 180, 5 C. C. C. 254.

6. **Supreme Court.**]—An appeal to the Supreme Court of Canada does not lie in cases where a new trial has been granted by the court of appeal under the provisions of the criminal code, 1892, ss. 742 to 750 inclusively. The word "opinion" as used in the second subsection of s. 742, of the Criminal Code must be construed as meaning a "decision" or "judgment" of the court of appeal in criminal cases. Viau v. The Queen, 29 S.C.R. 90.

7. **Supreme Court.**]—Construction of 60 and 61 Vict. c. 34 [D]—Appeals to the Supreme Court of Canada in criminal cases are regulated solely by the provisions of the Criminal Code. Rice v. The King, 32 S. C. R. 480.

8. **Supreme Court** — Unanimous Decision of Court of Appeal — Special Leave to Appeal to Supreme Court of Canada.]—The Court of Appeal (Ont.) were unanimous in affirming the conviction of appellant for murder, but it was contended by counsel that 60 and 61 Vict. c. 34 (Can.) overruled Crim. Code sec. 750 so far as appeals from the Court of Appeal of Ontario were concerned. It was held that this Act did not in any way apply to criminal cases. Rex v. Rice, 5 C. C. C. 529, 32 S. C. R. 480.

9. **Supreme Court of Canada** — Code Sec. 742-750.]—There is an appeal to the Supreme Court of Canada (under sec. 742 of the Code as restricted by sec. 750) where there has been a dissent in the Court of Appeal below, in cases only where the conviction has been affirmed by such Court. Where the Court of Appeal quashed the conviction and directed a new trial, no appeal lies therefrom to the Supreme Court of Canada. The word "opinion" in sec. 742 must be construed to mean the decision or judgment of the Court. It does not extend to allow an appeal from the decision of the majority of the Court of appeal where two judges dissented, on a question as to the admissibility of certain evidence, when on the same appeal the Court below directed a new trial on other grounds. R. v. Viau, 2 C. C. C. 540, 29 S. C. R. 90.

IX. Time.

1. **Case Stated.**]—The provision in s. 87 of the 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 appeal. Cooksley v. Nakashiba, 8 B. C. R. 117.

2. **Failure to Comply with Statutory Requirements.**]—An appeal is brought when the appellant makes his election by giving notice of his intention to appeal, and it is immaterial whether the appeal has ever been brought on for hearing, or that the same has been dismissed because of non-compliance with all statutory conditions precedent. Cooksley v. Toomatino, 5 C. C. C. 26.

3. **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. Regina v. Starkey, 7 Man. L. R. 489.

4. **Service** — Filing — Want of Jurisdiction — Waiver — Code Sec. 880.]—1. Where a notice of appeal from a summary conviction given under Code sec. 880, was addressed to the justice and

informant, but was served on the justice only: Held, not a compliance with the prerequisites laid down by the Statute. 2. All requirements of a statute providing for taking and perfecting an appeal are deemed jurisdictional, and must be strictly complied with, want of jurisdiction which appears on the face of the proceedings cannot be waived; and the Court must dismiss the appeal where such is the case, whether the point be raised by counsel or not. 3. Where the statute requires notice of appeal stating the grounds, to be served "at least five days" before the hearing, five clear days notice must be given exclusive of the day of service and of hearing. 4. The Court has power to award costs against the appellant where an appeal is dismissed for want of jurisdiction owing to defects in the notice of appeal. R. v. DOLIVER MINING CO., 10 C. C. C. 405.

5. **Time to Enter Appeal** — B. C. CONVICTIONS ACT.]—An appeal from a summary conviction under the Summary Convictions Act of B. C. must be entered for the trial not less than three days before the day on which the Court shall be held. The provisions of sec. 72 are imperative. GIBSON v. ADAMS, 10 C. C. C. 32.

X. WAIVER.

Waiver by Payment of Fine — CODE sec. 879-880.]—Defendant was fined for selling liquor to an Indian. He forthwith paid the amount of the fine to the Clerk of the Court, and gave notice of appeal within thirty days as provided for by sec. 108 of the Indian Act. The magistrate on application fixed the costs of the appeal. The amount of the fine was paid into the the city treasury and not into the County Court as part of the deposit. Objection was taken that the amount of the fine was not paid into the County Court as provided by Code sec. 888. Held, that the defendant having paid his fine with the intention of so doing, the appeal did not come within the province of sec. 880 of the Code. R. v. NEUBERGER, 6 C. C. C. 142, 2 B. C. R. 272.

XI. MISCELLANEOUS.

1. **Magistrate** — TAKING VIEW.]—On the trial for selling an intoxicant to an Indian, the magistrate, after hearing the evidence, but before giving his decision, went alone and took a view of the place of sale:—Held, (1) quashing the conviction, that this proceeding was unwarranted; (2) that ss. 108 of the Indian Act and 889 of the Criminal Code do not prevent proceedings by certiorari where the ground of complaint is that something was done contrary to the fundamental principles of criminal procedure. RE SING KEE, 8 B. C. R. 20.

2. **New Trial.**]—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, 10 Man. L. R. 303.

3. **New Trial** — JURY — CONFLICT OF TESTIMONY — PERVERSE VERDICT.]—On a charge of theft a new trial was refused although the verdict was contrary to the view of the Trial Judge, the evidence being conflicting, but the Court being of opinion that the verdict of guilty was one which reasonable men could properly find. In deciding the question of the reasonableness of the verdict the opinion of the trial Judge is entitled to and ought to receive great weight; but it is not conclusive. THE QUEEN v. BREWSTER (No. 2), 2 Terr. L. R. 377.

4. **Stay of Proceedings** — FORFEITURE OF LICENSE.]—An appeal against a conviction under the Liquor License Ordinance (N.W.T.) for supplying liquor to an interdicted person, suspends and stays all the consequences of the conviction, and if forfeiture of the license be one of the consequences of the conviction, it is also suspended pending the appeal. SIMINGTON v. COLBORNE, 4 C. C. C. 3814, 1 Terr. L. R. 372.

5. **Summary Conviction** — OBJECTION AS TO BY-LAW NOT TAKEN IN COURT BELOW.]—A defendant convicted on summary conviction of an infraction of a city by-law, is estopped from contending on appeal that the by-law is ultra vires unless the objection was taken before the magistrate. He is estopped from appealing on the merits if he pleaded guilty before the magistrate. REGINA v. BOWMAN, 6 B. C. R. 271.

See also CASE STATED; CROWN CASE RESERVED; CERTIORARI; HABEAS CORPUS; NEW TRIAL.—RESERVED CASE.

APPEARANCE OF ACCUSED.

Waiver — Of Defect in Information.]—Where the defendant appears and pleads to a charge in answer to a summons, issued by a magistrate on an information purporting to be sworn at a specified time and place, when in fact such was not the case, the appearance and pleading to the charge on the part of the accused operates as a waiver of the defect in the information, and the conviction will not be set aside on certiorari. Ex Parte Sonnier, 2 C. C. C. 121, 34 N. B. R. 84.

See also Prisoner.

ARRAIGNMENT.

Motion to Quash Indictment Can Be Made After.]—Where an accused has been arraigned and pleaded Not Guilty, a motion to quash the indictment can be made, as such arraignment and pleading is not tantamount to the accused being "given in charge to the jury, when the jury has not been sworn." The Queen v. Lepine, 4 C. C. C. 145.

See also Indictment ; Prisoner.

ARREST.

1. **Authority of Officer to Arrest Without Warrant** — On a Telegram — False Pretences — Habeas Corpus — Code Sec. 22 ; 552.]—A peace officer is justified in effecting the arrest without a warrant of a person charged with the offence of obtaining by false pretences goods capable of being stolen, with intent to defraud, on instructions received by telegram from another province, notwithstanding that the offence was committed in another province. Can. Crim. Code sec. 22, protects the officer from civil and criminal proceedings, but also operates to make lawful such an arrest. It applies to cases, not only where any person could make an arrest without a warrant, but also to cases where an officer alone could effect the arrest. Sec. 552 (7a) applies to only those cases within subsec. 7, and in all others it is not necessary that the accused should be brought before a justice by noon of the following day. R. v. Cloutier, 2 C. C. C. 43, 12 Man. L. R. 183.

2. **Central Prison** — Rules Creating Indictable Offence — Authority to Make — Section of Act Imposing Penalty — Indictment Under — Handcuffing — When Justifiable.]—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 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 section 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 and pay the sum of $40 to the warden, to be by him recovered in any Court of competent jurisdiction. The plaintiff, a workman of 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. Per Galt, C.J. and Rose, J., Under section 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 section 27. Per MacMahon, J., The power conferred by section 6 is limited to the objects therein expressed, and does not authorize the making of a rule to conflict with section 27, or which would cause an offence to be created indictable at common law, but that the plaintiff was by virtue of section 25 of R. S. C. ch. 173, subject to indictment under section 27, the remedy thereunder not being limited to the recovery

of the penalty. 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, 18 O. R. 585.

3. **Damages** — MEASURE OF — TRESPASS TO THE PERSON — ARREST BEFORE INDORSEMENT OF WARRANT — DETENTION AFTER.]—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 proceedings in such cases pointed out. SOUTHWICH v. HARE, ET AL. 24 O. R. 528.

4. **Detention of Accused** — HABEAS CORPUS — WARRANT ISSUED IN QUEBEC — CONSPIRACY — LOCALITY OF OFFENCE — AFFIDAVIT EVIDENCE — R. S. O. CH. 70, SECS. R. and 5 — CRIMINAL CODE SECS. 394 AND 752.]—A Judge cannot upon the return to a habeas corpus, where a warrant shews jurisdiction, try on affidavit evidence the question where the alleged offence was committed. Sections 4 and 5, R. S. O., ch. 70, are not intended to apply to criminal cases where no preliminary examination has taken place. Section 752 of the Criminal Code, 55-56 Vict. ch. 29 [D], only applies where the Court or Judge making the direction as to further proceedings and enquiries mentioned therein has power to enforce it, and a court or Judge in Ontario has no power over a Judge or Justice in Quebec to compel him to "take any proceedings or hear such evidence," etc. It is a crime under section 394 of the Code to conspire by any fraudulent means to defraud any person and so a conspiracy to permit persons to travel free on a railroad as alleged in these cases would be a conspiracy against the railway company. REGINA v. DEFRIES, REGINA v. TAMBLYN, 25 O. R. 645.

5. **Release of Prisoner by Officer** — NO VOLUNTARY ABANDONMENT OF PRISONER —RE-ARREST.]—The prisoner having been arrested under a warrant, and having been negligently allowed to escape, and the officer not having contemplated a voluntary abandonment of his prisoner, it was held the prisoner could be re-arrested under the same warrant. REX v. O'HEARON (No. 2), 5 C. C. C. 531, 21 C. L. T. Occ. N. 355.

6. **Without Warrant** — DETENTION OF PRISONER.]—1. A peace officer who arrests 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 justify the arrest and detention of his prisoner under either sec. 22 or sec. 552, s.-sec. 2, of the Crim. Code by alleging (a) that the prisoner has actually committed such offence or (b) that he, the peace officer, on reasonable and probable grounds, believes that the prisoner committed the offence charged. 2. Sec. 22 of the Code 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 may only so arrest. 3. Paragraph (a) at the end of s-sec. 7, sec. 552 of the Code, applies only to cases coming solely within s.-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. REGINA v. CLOUTIER, 12 Man. L. R. 183.

7. **Without Warrant** — HABEAS CORPUS — FOREIGN OFFENCE, 6 AND 7 VICT. CH. 34 IMP.]—The prisoner was arrested in Toronto, upon information contained in a telegram from England, charging him with having committed a felony in that country, and stating that a warrant had been issued there for his arrest:—Held, that a person cannot under the Imperial Act, 6 and 7, Vic. ch. 34, legally be arrested or detained here for an offence committed out of Canada, unless upon a

warrant issued where the offence was committed, and endorsed by a Judge of a Superior Court in this country. Such warrant must disclose a felony according to the law of this country, and semble, that the expression "felony, to wit, larceny," is insufficient. The prisoner was therefore discharged. [March 20, 1881.—Cameron, J.] REGINA v. MCHOLME, 8 P. R. 452.

8. **Without Warrant** — JUSTICE OF THE PEACE — ISSUE OF WARRANT — ABSENCE OF WRITTEN INFORMATION — NOTICE OF ACTION — CRIMINAL CODE, ss. 22, 23.]—A justice of the peace, who issues his warrant for the arrest of a person charged with felony without the information having been sworn, is liable in trespass. Sections 22 and 23 of the Criminal Code are a codification of the Common law and merely justify the personal arrest by the peace officer, whether justice or constable, on his own view, or on suspicion, or calling on some one present to assist him. They do not authorize a justice to direct a constable to make an arrest elsewhere without warrant. A notice of action alleging that the defendant on the 8th of September, 1893, wrongfully, illegally, and without reasonable and probable cause, caused the plaintiff to be brought before him and to be committed for trial, and to be confined in the common gaol, is a sufficient notice of action in trespass, Burton, J.A., expressing no opinion on this point. Per curiam. Semble, notice of action was necessary. Sinden v. Brown, 17 A. R. 173, approved and followed. Per Burton, J.A., notice of action is not necessary in such a case. Judgment of the Queen's Bench Division, 27, O. R. 117, affirmed. MCGUINESS v. DEFOE, 23 A. R. 704.

ARREST OF JUDGMENT.

1. **Arrest of Judgment** — OBJECTIONS.] —Objections on motion to arrest judgment are confined to the questions in the case stated by the Judge under the Act. REGINA v. FENNETY, 3 All. 132 [N.B.R.]

2. **Motion in Arrest of Judgment** — TWO OFFENCES IN SAME INDICTMENT.]— A motion in arrest of judgment may be made for any substantial defect which appears upon the face of the record. If the objection be valid, the whole proceedings will be set aside, but the party may be indicted again. An indictment is clearly bad where two offences are charged in a single count. Where the names of third persons cannot be ascertained, it is sufficient, to state "a certain person or persons to the jurors aforesaid unknown." QUEEN v. BLACKIE, 1 N. S. D. 383.

ARSON.

1. **Attempt to Commit Arson**.]—On an indictment for attempt to commit arson, the evidence shewed that a person, 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. c. 22, s. 12. REGINA v. GOODMAN, 22 C. P. 338.

2. **Building**.]—The remains of a wooden dwelling house, after a previous fire, which left only a few rafters of the roof, and injured the sides and floors so as to render it untenantable, and which was being repaired :—Held not a building within s. 7 of 32 and 33 Vict. c. 22, so as to be the subject of arson. REGINA v. LABADIE, 32 U. C. R. 429.

3. **Carpenter**.]—A building used by a carpenter, who was putting up a house near it, as a place of deposit for his tools and window frames which he had made, but in which no work was carried on by him :—Held, not "a building used in carrying on the trade of a carpenter," within 4 and 5 Vict. s. 26, c. 3. REGINA v. SMITH, 14 U. C. R. 546.

4. **Evidence of Intent**.]—The 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 recently been delivered of a child, whose body had been 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 shown 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. REGINA v. GREENWOOD, 23 U. C. R. 250.

5. **Intent.**]—But although the indictment is sufficient without alleging any intent, an intent to injure or defraud must be shewn on the trial. REGINA v. CRONIN, 36 U. C. R. 342.

6. **Intent.**]—In an indictment for arson, it is unnecessary to charge an 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 C. S. U. C. c. 113. REGINA v. GREENWOOD, 23 U. C. R. 250.

7. **Intent to Defraud Insurance Company** — EVIDENCE — PREVIOUS FIRE. REX v. BEARDSLEY, 5 O. W. R. 584, 805.

8. **Intent.**]—Upon 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. c. 93, s. 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 and 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. REGINA v. BRYANS, 12 U. C. C. P. 161.

9. **Suspension of Civil Right or Action.**]—Held, that where the original holder of a policy had been indicted for arson, it would not be in the interest of justice to postpone a suit by the assignee of the policy until after the criminal trial. WHITELAW v. NATIONAL INS. CO.; WHITELAW v. PHOENIX INS. CO., 13 C. L. J. 199.

ASSAULT.

1. **Accused Not a Competent Witness** — RES GESTAE.]—Upon an indictment for assault:—Held, that the accused was not a competent witness on his own behalf, under R.S.C. c. 174, s. 216. REGINA v. BONTOR, 30 U. C. C. P., 19; and REGINA v. RICHARDSON, 46 U. C. R. 375 followed. A statement by a man that was assaulted, made immediately after the assault and in the presence of the accused, is admissible in evidence. REGINA v. DRAIN, 8 Man. L. R. 535.

2. **Actual Bodily Harm.** — INTERPRETATION OF.]—The words "actual bodily harm" do not imply a breaking of the skin. REX v. HOSTETTER, 7 C. C. C. 221, 5 Terr. L. R. 363.

3. **Aggravated Assault.**]—C. S. C. c. 91, probably implies only to common assaults, etc. A charge of assaulting and beating is not a charge of aggravated assault, and a complaint of the former will not sustain a conviction of the latter, though when the party is before the magistrate, the charge of aggravated assault may be made in writing and followed by a conviction therefor. In RE MCKINNON, 2 C. L. J. 324.

4. **Aggravated Assault** — SUMMARY CONVICTION — MAGISTRATE — COSTS.]—Upon a summary conviction for an aggravated assault, the magistrate has jurisdiction to award costs. REGINA v. BURTRESS, 3 C. C. C. 536, 20 C. L. T. Occ. N. 368.

5. **Aggravated Assault.**— CRIM. CODE SEC. 864, 866, 783, 786—CONVICTION NOT A BAR TO CIVIL PROCEEDINGS.]—A conviction for aggravated assault tried under

sec. (c) 783 of the Criminal Code, with consent of accused is not a bar to a civil action for damages for assault and battery. CLARKE v. RUTHERFORD, 5 C. C. C. 13, 2 O. R. 206.

6. **Arrest in Public Place.**]—Where a man is himself assaulted by a person disturbing the peace in a public street, he may arrest the offender and take him to a peace officer to answer for the breach of the peace. It need not be averred or proved that the party was taken to the nearest justice. The plaintiff in the first and second counts, charges a false imprisonment. The defendant in the third plea justifies the imprisonment, by pleading that just before the said time, when, etc., the plaintiff was making a great noise and disturbance in a public street, and behaving in a riotous manner and made an assault upon the defendant, and that thereupon the defendant in order to preserve the peace took the plaintiff to a police station close at hand, on the line of the public works at Williamsburg, in the Eastern District, before a justice of the peace there, for examination concerning the premises, and to be dealt with according to law, etc. The plaintiff demurs to this, because it is not stated that the defendant was a peace officer ; or, that the riotous conduct was likely to continue ; or, that there was any necessity for arresting the plaintiff and taking him to the police station in order to preserve the peace. FORRESTER v. CLARKE, 3 B. C. R. 151.

7. **Assault Causing Bodily Harm** — SUMMARY CONVICTION FOR COMMON ASSAULT.]—On the preliminary enquiry on a charge of an assault causing actual bodily harm, the magistrate has no power after he has received all the evidence to summarily convict of common assault, even though no objection be made by the defendant or his counsel. EX PARTE DUFFY, 8 C. C. C. 277.

8. **Assaulting Police Officer**—ARREST OF SUSPECT — RESISTING — WARRANT.] — Where the defendant, arrested by a Provincial constable, who believed that a robbery had been committed, and that defendant was one of the persons who committed it, and who, being asked to shew his authority, produced and read a warrant against F. E. and others for breaking and entering a shop and stealing a quantity of goods therefrom, seeing that his name was not mentioned in the warrant, resisted arrest, and in so doing assaulted a constable, and was tried and convicted for assaulting a police officer in the discharge of his duty, with intent to resist lawful arrest, it was held that the arrest could be justified under the statute, notwithstanding the insufficiency of the warrant. REX v. SABEANS, 37 N. S. Reps. 223.

9. **Assault with Intent to Commit Felony.**]—An assault with intent to commit a felony is an attempt to commit such felony within the meaning of s. 183 of R. S. C. c. 174. 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. c. 162, s. 38. JOHN v. THE QUEEN, 15 S. C. R. 384.

10. **Assault with Intent.**]—The prisoner, who had been committed for extradition, was charged with assault with intent to commit murder, in that he had opened a railway switch, with intent to cause a collision, whereby two trains did come into collision, causing a severe injury to a person on one of them :—Held, that this was not an " assault " within the statute. IN RE LEWIS, 6 P. R. 236.

11. **Attempt to Have Connection.**]—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. CONNELLY, 26 U. C. R. 317.

12. **Authority to Find Lesser Offence** — MODE OF PROCEDURE ESTABLISHED.]— The Revised Statutes, c. 159, s. 16, by which, on trial for felony the jury is authorized to acquit of the felony and find a verdict of guilty of a misdemeanor, if the evidence warrants it, establishes a general mode of procedure in all criminal cases, and is not confined to felonies existing at the time of the passing of the statute ; therefore, on an indictment for felonious assault under the Act 25 Vict. c. 10, the prisoner may be found guilty of an assault only. REGINA v. RYAN, 1 Han. N.B.R. 116.

13. **Bar of Civil Remedy.**]—Sections 865 and 866 of the Criminal Code, 1892, whereby it is enacted that a person who has obtained a certificate of the justice who tried the case, that a charge against him of assault and battery has been dismissed or who has paid the penalty or suffered the imprisonment awarded shall be released from all further proceedings, civil or criminal, for the same cause, are intra vires the Dominion Parliament. FLICK v. BRISBIN, 26 O. R. 423.

14. **Bar of Civil Remedy.**]—Where a charge under s. 262 of the Criminal Code, 1892, of assault causing actual bodily harm is brought under part 55 of the Code, by the election of the defendant under s. 786 to be tried summarily, a conviction releases under s. 799, from further criminal proceedings, but does not bar civil proceedings. FLICK v. BRISBIN, 26 O. R. 423, distinguished. NEVILLS v. BALLARD, 28 O. R. 588.

15. **Bar of Civil Remedy** — ALTERATION OF CHARGE.]—Justices of the peace before whom a charge of " shooting and wounding with intent to do grievous bodily harm " came on for preliminary hearing, changed it of their own motion to one of common assault and convicted and fined the accused. The information was laid by a peace officer, and the person aggrieved attended the hearing pursuant of subpoena and gave evidence, and did not object when the charge was changed :—Held, that the justices had no right to alter the charge to one of common assault and that their certificate of conviction and payment of the fine was a nullity and no bar under s. 866 of the Code to an action by the person aggrieved to recover damages. MILLER v. LEA, 25 A. R. 428.

16. **Consent to Fight.**]—A contest entered into in a spirit of hostility and anger is a breach of the peace, and an individual cannot by consent to fight, destroy the right of the Crown to protect the public and keep the peace. REGINA v. BUCHANAN, 1 C. C. C. 442, 12 Man. L. R. 190.

17. **Constable Arresting Under 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 fines 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 the nonpayment of the fine and costs, including costs of conveying to the goal, as not authorized by the said Act. REGINA v. KING, 18 O. R. 566.

18. **Criminal Code Sec. 866** — WHETHER A BAR TO CIVIL ACTION.]—Section 866 of the Criminal Code does not operate as a bar to civil action, where conviction was on trial of an indictment before a Petit Jury. CLERMONT v. LE GACÉ, 2 C. C. C. 1.

19. **Defendant's Evidence.**]—On an indictment for assault and battery occasioning actual bodily harm :—Held, that the defendant is not a competent witness on his own behalf under 43 Vict. c. 37 (D). REGINA v. RICHARDSON, 46 U. C. R. 375.

20. **Detention.**]—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 conviction, was merely standing in front of the horses, and did not amount to an assault. REGINA v. MCELLIGOTT, 3 O. R. 535.

21. **Evidence of Subsequent Conduct.**]—Upon the trial of the prisoner, a school teacher, for an indecent assault upon one of his scholars, it appeared that he forbade the prosecutrix telling her parents what had happened, and they did not hear of it for two months after the prosecutrix had given evidence of the assault, evidence was tendered of the conduct of the prisoner towards her subsequent to the assault :—Held that the evidence was admissible as tending to shew the indecent quality

of the assault, and as being in effect a part or continuation of the same transaction as that with which the prisoner was charged. By the majority of the court:—The evidence was properly admissable as evidence in chief. REGINA v. CHUTE, 46 U.C.R. 555.

22. **Firing Pistol.**]—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, here, that there was sufficient evidence of the prisoner having done this, and a conviction for assault was upheld. REGINA v. CRONAN, 24 U.C.C.P. 106.

23. **ndecent Assault** — LIMITATION OF TIME — SEC. 259.]—On a charge of indecent assault committed on an adult female, where the complainant allowed considerable delay to intervene before laying the charge, it would under some circumstances warrant an inference that the prosecutrix had consented to th assault. R. v. SMITH, 9 C.C.C. 21.

24. **Indecent Assault** — ATTEMPT TO CARNALLY KNOW FEMALE UNDER FOURTEEN YEARS — CORROBORATION — CODE SEC. 259-685.]—Defendant was charged with having attempted to have unlawful carnal knowledge of a girl under fourteen. The child was about seven years of age, and the Court considered she did not comprehend the nature of an oath. The unsworn testimony of the girl was however received. The mother of the child was also called and testified that she left the defendant alone with the child, while she herself went to church: that on her return the house was locked, and she found the child on entering, asleep on a lounge and awakening her, noticed her eyes were red and she looked frightened. Later the child made a statement to the mother similar to the evidence given by her as to the assault:—Held, that the evidence in support was not such material evidence implicating the accused as was required by sec. 685 of the Code to warrant a conviction. Held, further, that the evidence disclosed the offence of common assault, in regard to which the child's evidence was receivable under sec. 25 of the Canada Evidence Act which sec. did not require the same degree of corroboration as sec. 685 of the Code. The fact that the depositions disclose a more serious offence than that on which accused was committed for trial, does not necessarily take the case out of the jurisdiction of the County Court Judge, where the prisoner consents to speedy trial. R. v. DE WOLFE, 9 C.C.C. 38.

25. **Indecent Assault** — TIME OF MAKING COMPLAINT — DELAY — EVIDENCE OF CHILD — CODE SEC. 259.]—Accused was charged with having committed an indecent assault upon a girl under the age of fourteen years. The child was seven years of age and gave her evidence under oath. No complaint had been made by the child to her mother until ten days after the assault.:—Held, that evidence of the complaint having been made is not necessarily inadmissible because it was not made immediately after the commission of the offence; there is no fixed time within which such a complaint must be made; in some cases the delay of two days might be unreasonable, while in other cases a fortnight's delay might not be unreasonable; much depends upon the special circumstances of each case. Where the evidence shewed that the child was of such tender years that she had not sufficient realization of the serious nature of the offence, and therefore was not affected by that indignation and sense of wrong which would naturally lead to making a complaint, a delay of ten days was held not to render inadmissible evidence of complaint having been made. R. v. BARRON, 9 C.C.C. 196.

26. **Indictment, Form of.**]—An indictment as follows: "That D. D. . . . in and upon one C., did make an assault, and . . . . the said C. did then beat, wound and ill-treat, thereby occasioning to the said C. actual bodily harm and other wrongs to the said C. against the form of the statute," etc. Held, 1. To be an indictment for an assault occasioning actual bodily harm. REGINA v. DRAIN, 8 Man. L.R. 535.

27. **Indictment for Manslaughter.**]—Under C.S.C. c. 99, s. 66, there can be no conviction for assault unless the indictment charges an assault in terms, or a felony necessarily including it, which manslaughter is not. Where, therefore, the indictment was not for manslaughter, in the form allowed by that Act, charging that defendants "did feloniously kill and slay" one D.:—Held that a conviction for assault could not be sustained. REGINA v. DINGMAN, 22 U.C.R. 283.

28. **Indictment for Murder.**]—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 & 33 Vict. c. 29, s. 51. REGINA v. GANES, 22 C. P. 185.

29. **Indictment for Murder.**] — On an indictment for murder in the statutory form, not charging an assault, the prisoner, under 32 & 33 Vict. c. 29 s. 51, cannot be convicted of an assault; and his acquittal of the felony is therefore no bar to a subsequent indictment for the assault. REGINA v. SMITH, 34 U. C. R. 552. But 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. IB.

30. **Indictment for Rape** — FINDING OF GUILTY FOR ASSAULT — STATUTE OF LIMITATIONS.]—On an indictment for rape, the accused may be found guilty of the lesser charge of common assault; notwithstanding the time limit has expired in which an information for assault might have been laid as a summary offence, since section 841 of the Can. Crim. Code limiting the time in which an information can be laid " in the case of any offence punishable on summary conviction," applies only to the proceedings under the summary conviction clauses of the Code. R. v. EDWARDS, 2 C. C. C. 96, 29 O. R. 457.

31. **Indictment for Shooting With Intent.**]—Upon an indictment for shooting with a felonious intent, the prisoner, if acquitted of the felony, may be convicted of common assault. REGINA v. CRONAN, 24 U. C. C. P. 106.

32. **Insult.**]—The defendant was convicted of having unlawfully assaulted the complainant, who was the daughter of the convicting justice, where the only evidence was, that the defendant had, in company with one S., gone to the complainant's house at the hour of about ten o'clock p.m., and S. had knocked at the door and told the complainant that he desired to introduce the defendant, wherefore the complainant replied that they had come to insult her, and that she would have them both arrested in the morning: —Held, that there was no evidence of an assault, and the conviction must be quashed. REGINA v. LANGFORD, 15 O. R. 52.

33. **Insulting Language and Menaces.**] —Sci. fa. upon a recognizance to keep the peace and be of good behaviour towards Her Majesty and all her liege subjects, and especially towards H. M., charging an assault and breach of the peace. For the Crown a judgment of the Court of Quarter Sessions was proved, affirming a conviction of defendant before magistrates on a charge of assaulting H. M. " by using insulting and abusive language to him in his own office, and on the public street and by his using his fist in a threatening and menacing manner to the face and head of the said H. M." :—Held, sufficient proof of a breach of the peace. Held also, that defendant was properly convicted, for the offence charged amounted to an assault. REGINA v. HARMER, 11 U. C. R. 555.

34. **Malicious Wounding** — MISDEMEANOR — FORM OF CONVICTION — PUNISHMENT.]—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 misdemeanor of malicious wounding. Held, also, that imprisonment at hard labour for a year was properly awarded under 38 Vic., ch. 47. REGINA v. BOUCHER, 8 P. R. 20.

35. **Mens rea** — GRIEVOUS BODILY HARM — CODE SEC. 241-242.]—The accused was indicted " for that he did, etc. with intent to disable . . . . unlawfully wound . . . . by shooting at him with a loaded gun." The verdict returned was " guilty without malicious intent." The accused was convicted thereon of the offence of inflicting grievous bodily harm under sec. 242 of the Code; and the jury had been instructed that if they concluded the intent to disable was disproved they might find a verdict of guilty under Code sec. 242.:—Held, on appeal to the Supreme Court of Canada that the verdict amounted to an acquittal. (Reversing 9 C. C. C. 53.) SLAUGHENWHITE v. THE KING, 9 C. C. C. 173, 35 S. C. R. 607.

36. **Necessary Allegation** — GRIEVOUS BODILY HARM.] — An indictment under

the Act 12 Vict. c. 29, for causing grievous bodily harm, must allege the offence to have been committed "maliciously" in the words of the Act. It is not included in the word "feloniously." REGINA v. JOPE, 3 All. N. B. R. 161.

37. **Occasioning Bodily Harm.** — MODE OF TRIAL.]—The offences which are to be tried in a summary way without the intervention of a jury, and which are specifically enumerated in section 66 of the North-West Territories Act should be taken to cover all lesser offences included therein, and under such Act a charge of assault occasioning bodily harm is to be tried by a Judge without a jury. REX v. HOSTETTER, 7 C. C. C. 221, 5 Terr. L. R. 363.

38. **Power to Convict of Common Assault Under Crim. Code 262.**]—Though the information is for an assault occasioning bodily harm, an indictable offence under sec. 262 of the Code, the magistrate under sec. 713 may convict of common assault, as the offence under sec. 262 includes a common assault. REX v. COOLIN, 8 C. C. C. 157, 36 N. S. R. 510.

39. **Quarter Sessions.**]—The Court of Quarter Sessions has power, in the case of an assault, to pronounce a sentence of fine and costs of prosecution, and imprisonment in case of default. OVENS v. TAYLOR, 19 C. P. 49.

40. **Reducing Charge** — CERTIFICATE OF JUSTICE AS BAR TO CIVIL ACTION — JURISDICTION.]—Justices of the Peace have not of their own motion jurisdiction to reduce a charge of wounding with intent to do grievous bodily harm, to one of common assault, in order that they may proceed to dispose of it in a summary way, and a certificate of the justice as to dismissal of the charge, is not a bar to a subsequent civil action in such a case. It is most important in cases of this kind to insist upon the principle that the right of Justices to adjudicate be confined within the limits of the information. The mere presence of the party aggrieved as a witness, at the hearing of the charge before the Justices, where the complaint was laid by a peace officer, does not constitute such an acquiescence in the hearing as would amount to an election on his part to proceed summarily before the magistrates. It is only where he has elected to proceed summarily, that the civil remedy is affected by the statutory bar. MILLER v. LEA, 2 C. C. C. 282, 25 A. R. 428.

41. **Revenue Officer** — BREAKING OPEN BUILDING — JUSTIFICATION.]—By the Revenue Act, 11 Vict, c. 2, a revenue officer is authorized to enter any building wherein he shall have cause to suspect smuggled goods to be concealed, provided that before entry, information on oath shall be given to a justice of the peace, that such officer has reasonable cause to suspect such goods are concealed therein, and that such justice shall go with the officer to such building, and authorize him to enter and search for goods, and if the doors be closed and admission denied, then, after first demanding to be admitted, and declaring the purpose of the entry, it shall be lawful for the justice to direct the officer to enter the building and search for goods. Held, that to justify the breaking open a building there should have been, first, a written information on oath; and, second, the actual presence of the justice at the breaking; his being near to the place is not sufficient. REGINA v. WALSH, 2 All. 387 (N.B.R.)

Not opening a building after a proper demand, is a sufficient denial within the Act. If the breaking open is unlawful the officer cannot justify the seizure of smuggled goods found within the building. Semble, that an order to enter, given to a police officer present with the revenue officer, would be sufficient, and that he would be presumed to be acting in aid. IBID.

42. **Riot and Assault.**]—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, 6 C. P. 372.

43. **Shooting with Intent** — JUSTIFICATION — QUESTIONS FOR JURY — MISDIRECTION.] — The defendant, who was employed as watchman and special constable, was in the act of arresting P. for committing a disturbance, when he received a blow from behind which cut his head. Turning he saw M.

immediately behind him, and, supposing him to be the person by whom the blow was struck, tried to arrest him. M. ran away followed by the defendant, who had in his hand a small stick. Near the station of which the defendant was in charge, this stick was wrested from him by E. P., who had followed with a number of others, and, in the disturbance which followed, during which, according to the defendant, one of the persons present raised a stick in a menacing manner and threatened to smash his brains out, the defendant drew a revolver and fired two shots, one of which struck E. P.:—Held, setting aside the conviction of the defendant for shooting with intent to do grievous bodily harm, that it was misdirection on the part of the trial Judge to charge the jury that there was no concerted attack upon the defendant, and no assault at the time the shots were fired, that the assault was over, and that those present were not within striking distance, these being questions for the jury. The assault upon the defendant having been admittedly committed without provocation, the questions for the jury were: (1) whether the defendant had any intention of causing bodily harm, and if not, (2) whether he used any more force than was necessary:—Held, further, that under the Code, s. 45, defendant being justified, if the force used by him was not meant to cause death, or grievous bodily harm, or was no more than was necessary for the purposes of self-defence, would have enabled the jury to find for the defendant. The trial Judge erred in charging the jury that there must be evidence that the defendant could not otherwise preserve himself from death or grievous bodily harm. Rex v. Ritter, 36 N. S. Reps. 417.

44. **Summary Conviction.**]—On motion to quash a conviction by two justices of the County of Norfolk for an assault:—Held, 1. that stating the offence to have been committed at defendant's place in the Township of Townsend was sufficient, for C. S. U. C. c. 3, s. 1, ss. 37, shews that township to be within the county; 2. That it was unnecessary to shew on the face of the conviction that complainant prayed the magistrates to proceed summarily, for the form allowed by C. S. C. c. 103, s. 50, was followed, and if there was no such request, and therefore no jurisdiction, it should have been shewn by affidavit; 3. that it was clearly no objection that the assault was not alleged to be unlawful. Regina v. Shaw, 23 U. C. R. 616. It had been previously held that the prayer for summary jurisdiction should appear on the fact of the information. In re Switzer and McKee, 9 L. J. 266.

45. 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. Regina v. Smith, 46 U. C. R. 442.

46. **Summary Trial** — Punishment — Jurisdiction of Magistrate.]—Held, per Graham, E.J., that a police magistrate trying by consent a person accused under sec. 241 of the Code has the same power to punish as a Judge of Sessions in Ontario trying a similar case on indictment. Held per Townsend, J., that a magistrate trying by consent a person accused under Code sec. 241, had not jurisdiction to impose a fine and in default imprisonment for five months as under sec. 265 only fine or imprisonment can be imposed in the first instance; the sec. 872 (b) provides the machinery to carry out the fine, but limits the imprisonment to three months. R. v. Hawes, 6 C. C. C. 238.

47. **Suspension of Civil Right of Action.**]—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 the plaintiff's civil right of action was suspended until the criminal charge was disposed of:—Held, plea good, and an order was accordingly made staying the civil action in the meantime. Taylor v. McCullough, 8 O. R. 309.

48. **Teacher and Pupil** — Criminal Code — Punishment — Excess.]—The Criminal Code, s. 55, authorizes parents, persons in the place of parents, schoolmasters, etc., to use force by way of correction towards any child, etc., under his care, "provided such force is reasonable under the circumstances," but by s. 58, "everyone by law authorized to use force is criminally responsible for any excess." The defendant, a teacher in one of the public schools, was charged before a magistrate with assaulting, beating, and illusing J. O., one of the pupils under his care, and was acquitted on the ground that there was no evidence of malice on his part or of permanent injury to the child:—Held, that the only question properly before the magistrate was whether the punishment was reasonable in the circumstances, or in other words, whether there was excess:—Held, that there is no warrant in the Code for the test applied in the American case of State v. Pendergrass, 31 Am. Dec. 365, and adopted by the magistrate, that it is necessary for the prosecutor to prove either that the person inflicting the punishmet was actuated by malice or that his act resulted in permanent injury to the child. Rex v. Gaul, 24 C. L. T. Occ. N. 135; 36 N. S. Reps. 504.

49. **Trespasser** — Refusal to Depart.]—A trespasser upon land of which another is in peaceable possession cannot be convicted of an assault under sec. 53 of Crim. Code, 1892, merely because he refuses to leave upon the order or demand of the other; and the latter part of the section does not apply until there is an overt act on the part of the person in possession towards prevention or removal, and an overt act of resistence on the part of the trespasser. A verdict, therefore, against the defendant for malicious prosecution in charging the plaintiff before a magistrate with an assault, where the plaintiff had merely refused, on the demand of the defendant, to quit the premises upon which he was trespassing, was held to be right. Pockett v. Pool, 11 Man. L. R. 314

See Regina v. Pike, 12 Man. L. R. 275.

See also Appeal—Certiorari—Conviction — Grievous Bodily Harm — Indictment.

ATTAINDER.

1. **Estate of Traitor.**]—The estate of a traitor, concerned in the rebellion of 1837, and who accepted the benefit of the provincial statute, 1 Vic. ch. 10, is at once by such acceptance as much vested in the Crown under the operation of the 33 Henry VIII. ch. 20, sec. 2, without office found, as afterwards. Semble, that the wife of an attainted traitor, remaining in possession of her husband's land, cannot defeat the recovery of a plaintiff in ejectment (the purchaser at sheriff's sale, in an action brought against the traitor upon a bond entered into before his attainder), by setting up, under the attainder, a title by forfeiture in the Crown, which the Crown had foreborne to assert. Doe d. Gillespie v. Wixon, 5 U. C. R. 132.

2. **Grant of Governor Under His Seal-at-Arms** — Power of an Indian Chief to Act as an Agent for the Tribe — Power of Commissioners of Forfeited Estates — 59 Geo. III. ch. 12 — Inquisition Void for Want of Certainty — Description in Conveyance — Meaning of Phrase "More or Less."]—A grant of lands in 1784, by the then Governor of the Province of Quebec, etc., under his seal-at-arms, to the Mohawk Indians and others, conveyed no legal estate; first, as not being by letters patent under the great seal; secondly for want of a grantee or grantees capable of holding. Held, also, that the mere fact of a chief of an Incian tribe assuming to act as a duly authorized agent in the name and on behalf of the tribe, shewed no power in him so to act; and therefore, that a lease, signed by him as agent, etc., conveyed nothing. And consequently, that such lessee had no estate, which, on his being subsequently attainted of high treason, could be forfeited to the Crown, and vest in the commissioners of forfeited estates, under 59 Geo. III. ch. 12. Though by the 33 Hen. VIII. ch. 29, the Crown, in case of attainder for high treason, would be deemed in actual possession without any inquisition of office, yet such lands only would vest in the commissioners under 59 Geo. III. ch. 12, as should be found by an inquisition to be vested in the Crown, and therefore no more land could possibly pass by a deed from the commissioners than the

inquisition had found the traitor seized of. And held, that the inquisition could not support the conveyance which the commissioners made; for it referred to nothing which could possibly supply proof of identity and the commissioners were not warranted in going beyond the inquisition and, semble, that the inquisition was void for want of certainty. DOE D. SHELDON V. RAMSAY, 9 U. C. R. 105.

Statute Passed Reversing Attainder Except as to Lands Already Forfeited and Sold — EFFECT OF, ON PROOF REQUIRED FROM PARTIES CLAIMING UNDER THE TRAITOR — MERE DATE OF WILL BEING THIRTY YEARS OLD, NOT SUFFICIENT TO DISPENSE WITH PROOF — 13 & 14 VIC. CH. 63.]—A statute was passed reversing the attainder of A. S., and taking away the forfeiture wrought thereby, so far as it might affect such portions of this estate as had not been already declared forfeited, and been sold under authority of law, and vesting such estate in those who could claim it if he had not been attainted; provided always, that nothing in the Act contained should affect any property sold or conveyed by the Commissioners of Forfeited Estates, or any public officer acting for the Crown in that behalf; but that such property should remain as if the Act had not been passed. In the preamble it was recited that part of the estate had been taken upon inquisition, and seized by the Crown. Held that the plaintiffs claiming as devisees of A. S. must shew, as part of their case in the first instance, that the lands claimed were not part of those forfeited and sold. The mere fact of the date of a will being thirty years old, is not sufficient, under all circumstances, to prove that it is the real age of the writing, even if it comes from the proper custody; but some proof must be given of a concurrent possession of the property consistent with it or of the existence of the will for thirty years. DOE D. STEPHENS V. CLEMENT, 9 U. C. R. 650.

ATTEMPT.

1. **Attempt to Steal** — INDICTMENT — NO DESCRIPTION OF GOODS — NAME OF PERSON ATTEMPTED TO BE STOLEN FROM UNKNOWN.]—Where the name of the person attempted to be stolen from is unknown to the grand jury it is sufficient to state merely that the crime has been committed against a person to the jurors unknown, nor is it necessary to specify any goods. REGINA V. TAYLOR, 5 C. C. C. 89.

2. **Summary Trial** — CONVICTION OF ATTEMPT — JURISDICTION.]—The prisoner having elected for summary trial before a magistrate of picking the pocket of a woman and having on the evidence been convicted of having attempted to pick the pocket, it was held on trial that having assented to be tried summarily for whatever offence he might properly be found guilty of upon said charge, he was properly convicted of the attempt. REX V. MORGAN, (No. 2), 5 C. C. C. 272, 2 O. R. 413, 3 O. R. 356.

AUTREFOIS ACQUIT.

1. **Autrefois Acquit.**]—The prisoner being indicted under C. S. U. C. c. 98, and charged as a citizen of the United States, was acquitted on proving himself to be a British subject. He was then indicted as a subject of her Majesty, and pleaded autrefois acquit:. Held, that the plea was not proved, for that by the statute the offence in the case of a foreigner, being insufficient as against a subject; and the prisoner therefore was not in legal peril on the first indictment. REGINA V. MAGRATH, 26 U. C. R. 385.

2. **Autrefois Acquit**—PLEA OF.]—Where a person is indicted for an offence and acquitted, he cannot be again indicted for the same offence, if the first indictment were such that he could be lawfully convicted on it. It is not necessary that the two offences should be expressly or by name the same in both indictments. If the offence in the first indictment on which an acquittal has been found, is a lower one, and is included in that set out in the second, or if it be a higher one, and includes the offence set out in the second indictment, the plea of autrefois acquit must be given effect to. Such a plea is not supported to a plea of perjury in swearing on oath as to identity prescribed by the Dominion Elections Act, by producing a record of acquittal on a previous charge of personation in regard to the same matter. Such a previous acquittal, however, would entitle the accused to raise the common law plea of res judicata as between the Crown and the accused. R. V. QUINN, 10 C. C. C. 412.

AUTREFOIS CONVICT.

Onus of Proof — TIME STATED IN CONVICTION NOT SUFFICIENT.]—Where the offence is alleged to have taken place within the period named in a former conviction, the onus is on the defendant to prove that the two charges are identical ; and the mere fact that the days between which the defendant was charged with keeping liquor for sale were included in the times stated in the conviction for selling does not sustain a defence of autrefois convict. EX PARTE FLANNIGAN, 5 C. C. C. 82, 34 N. B. R. 577.

BAIL.

1. **Acknowledgment** — ESTREAT — WRIT OF FIERI FACIAS AND CAPIAS.]—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 substance of the recognizance; and the verbal acknowledgement 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 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 recogizance should have stated that the parties personally came before the court, and that the recognizance was taken and acknowledged 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. c. 179, ss. 10 and 11, and R. S. O. 1887, c. 88, ss. 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, making it up stated it to be make 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. 7. The estreat roll, as drawn up, stated that it was a roll of fines, issues, amerciaments, and forfeited recognizances, set, imposed, etc., and contained the names of the 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. 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. 1887, c. 88 ; and the writ of fieri facias and capias issued in this case following the form given in the schedule to the 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, 23 O. R. 65.

2. **Affidavit** — RECOGNIZANCE.]—Where the affidavit accompanying a recognizance filed on a motion for a rule nisi to quash a conviction did not negative the fact of the sureties in any other matter, and omitted to state that they were worth $100 over and above any amount for which they might be liable as sureties, it was held insufficient. The rule in force as to recognizances prior to the passing of the Criminal Code is still in force. REGINA v. ROBINET, 16 P. R. 49.

3. **After Commitment for Trial.**]—A Judge who has committed a prisoner for trial for perjury under R. S. C. c. 154, s. 4 [a], is not thereby functus officio, but may subsequently admit the prisoner to bail. IN RE VICTOR M. RUTHVEN, 6 B. C. R. 115.

4. **Application for Bail by Prisoners Committed for Murder** — DELAY OF TRIAL.] —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 to discretion, and not of right, the prisoners not having brought themselves within 31 Can. 11 cap. 2, sec. 7, by applying on the first day of the assize to be brought to trial. REGINA v. MULLADY, 4 P. R. 314.

5. **Benefit of Statute** — CUSTODY.]— A person admitted to bail is constructively in gaol, and he is entitled to be released from this custody as from an imprisonment in the case where a statute contains certain beneficial provisions in reference to persons committed for trial. REGINA v. H. B. CAMERON, 1 C. C. C. 169.

6. **Committal of Witness for Perjury** — WHETHER JUDGE FUNCTUS OFFICIO.]— A Judge after ordering committal of a witness for perjury is not thereby functus officio, but may admit prisoner to bail. EX PARTE RUTHVEN, 6 B. C. R. 115, 2 C. C. C. 39.

7. **Common Law Offence** — ONE JUSTICE.]—One justice of the peace may admit to bail where the offence is one at common law not provided for by the Code. REX. v. COLE, 5 C. C. C. 330, 3 O. R. 389.

8. **Consideration of Amount of.**]—The test which is to govern the discretion of the Court on application for bail, is the probability of accused appearing to stand his trial. The Court will be guided by a consideration of the nature of the crime charged, the severity of the punishment, and the probability of conviction. R. v. GOTTERIEDSON, 10 C. C. C. 239.

9. **Copies of Information, Examination, Etc., How Certified** — CON. STAT. CAP. 102, s. 63.]—Held, that where a prisoner makes application to a Judge in Chambers to be admitted to bail to answer a charge for an indictable offence, under Con. stat. Can. cap. 102, s. 63, the copies of information, examination, etc., may be received though certified by County Crown Attorney and not by the committing Justice. REGINA v. CHAMBERLAIN, 1 C. L. J. 157.

10. **Determining Amount of.**]—In committals for trial for violation of the Dominion Elections Act, 1900, where there is not only charges of the accused fleeing to avoid punishment, but that bail may be intentionally forfeited to avoid scandal, substantial bail must be required. THE QUEEN v. STEWART, 4 C. C. C. 131.

11. **Estreat** — CERTIFICATE OF NON-APPEARANCE — ENDORSEMENT OF ON RECOGNIZANCE.]—The sureties applied to vacate the estreat of the recognizance of bail, on the ground that the endorsement of the certificate of non-appearance was not done in pursuance of sec. 589 of the Code. Held, that [bail having been given in January, 1897, and the application was not made till January, 1905] there had been a great delay in making the motion, that the objection must be a substantial one to prevail ; that the endorsement was in substantial compliance with the Code, and it was sufficient for the magistrate to initial the indorsement. R. v. MAY, 9 C. C. C. 529.

12. **Estreat of** — MOTION TO VACATE.] —Where there is alleged to have been some understanding entered into, of which the sureties were not cognizant, relative to matters extrinsic to the record, and the allegation is met by conflicting affidavits by the magistrate and county attorney, and the record is in conformity with the Code practice, the Court will not interfere in a summary way to vacate the estreat. R. v. BOLE, 9 C. C. C. 500.

13. **Extradition** — DISCRETION OF COMMISSION TO ALLOW BAIL.]—Without deciding whether the extradition Commissioner has power to admit a prisoner to bail, it should not be granted under ordinary circumstances either prior to or pending the adduction of evidence though it would be otherwise if after repeated demands the complainant failed to produce any evidence or if that offered was unsatisfactory. UNITED STATES v. WEISS, 8 C. C. C. 62.

14. **Forgery.**]—A prisoner charged with forgery in Canada was arrested 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. REGINA v. VAN-AERMAN, 4 U. C. C. P. 288.

15. **Grounds for Admitting Criminal Prisoners to Bail** — PROBABILITY OF THE PRISONER APPEARING TO TAKE HIS TRIAL —ARSON.]—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 attemped 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. BYRNES, 8 L. J. 76.

16. **Habeas Corpus.**]—Prisoner applied for a writ of habeas corpus to be admitted to bail :..Held, I. That in respect to indictable offences which were felonies prior to the Code it is discretionary with the Judge or Court to grant or refuse bail, but in respect to indictments which were only misdemeanours before the Code, the accused is entitled to bail as a matter of right. 2. In all cases except misdemeanours the matter of bail rests entirely in the sound discretion of the Court or Judge, and is not as of right. 3. The propriety of admitting to bail for indictable offences should be determined with reference to accused's opportunities to escape, the probability of appearing at the trial, and not with reference to his supposed guilt or innocence. It is proper to consider the nature of the offence charged, its punishment, the evidence adduced, the character, and standing of the accused. 4. Where a serious doubt as to guilt arises, bail should be granted. EX PARTE FORTIER, 6 C. C. C. 191, Q. R. 13 K. B. 251.

17. **Jurisdiction of Justice to Grant.**]—Although a statute may require the presence of three justices to convict of an offence, yet one has power to bail the offender ; and a second arrest for the same charge, by the same complainant, before the time appointed for the hearing is illegal. KING v. ORR, 5 O. S. 724.

18. **Manslaughter** — AFFIDAVIT BY CROWN PROSECUTOR THAT CRIME OF MURDER CAN BE PROVED.]—On an application for bail on a charge of manslaughter the Crown prosecutor made affidavit that he could prove on the prisoner's trial that the crime amounted to murder, but bail was nevertheless granted. REX v. SPICER, 5 C. C. C. 228.

19. **Murder.**]—Prisoners charged with murder cannot be admitted to bail, except under extreme circumstances ; otherwise, with accessories after the fact. QUEEN v.MURPHY, et al.,James, N.S.R 158.

20. **Murder.**]—Where the grand jury have found a true bill for murder, bail will generally be refused. In this case 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. Remarks as to considerations which should govern the exercise of discretion in granting or refusing bail. REGINA v. KEELER, 7 P. R. 117.

21. **Refusal by Magistrate.**]—Held, [Before the passing of 16 Vict. c. 179], that magistrates were not liable for refusing to admit to bail on a charge of misdemeanour in the absence of any proof of malice. CONROY v. MCKENNEY, 11 U. C. R. 439.

22. **Recognizance** — CONDITION OF.] —The recognizance entered into by the defendants on the removal of the proceedings from the sittings of oyer and terminer and general gaol delivery to the Queen's Bench Division of the High Court provided that they should " appear in this court and answer and comply with any judgment which may be given upon or in reference to a certain indictment, etc., or upon or in reference to the demurrer to such indictment, and plead to said indictment if so required." Semble, that the practice and procedure before the Judicature Act should be maintained in its entirety ; though possibly it might be varied by agreement. By the recognizance the defendants had not agreed to vary it,

but they might thereunder elect to appear and to answer to the indictment, or to appear and argue the demurrer ; and they, being ready to appear and answer the indictment would fully perform the condition of the recognizance by so doing. REGINA v. BUNTING, 7 O. R. 118.

23. **Rescinding Order.**]—Where a prisoner charged with felony had been admitted to bail upon an order of a Judge, and an application was subsequently made to rescind such order and to recommit the prisoner, on the grounds that he had not been committed for trial at the time such order was granted, and that the bail put in was fictitious :—Held, that a Judge had 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. REGINA v. MASON, 5 P. R. 125.

24. **Right to Bail** — PERSON COMMITTED FOR EXTRADITION.]—The Court should be very slow to admit to bail a person arrested or convicted for extradition. RE WATTS, 5 C. C. C. 538, 3 O. R. 279.

25. **Right of Accused Admitted to Bail to Speedy Trial.**]—A person accused of an indictable offence who has been admitted to bail under Code sec. 601 by the magistrate before whom he is brought for preliminary examination upon the charge, has a right to speedy trial under Code sec. 765 to the same extent as if the magistrate had committed him for trial under sec. 506. REGINA v. LAWRENCE, 5 B. C. R. 160, 1 C. C. C. 295.

See also CERTIORARI—JUSTICE OF THE PEACE—RECOGNISANCE.

BANKS AND BANKING.

1. **Bank Act.**—OFFICIALS MAKING FALSE RETURNS — DEMURRER.]—Bank officials indicted on the charge of making a monthly report a wilful false and deceptive statement with intent to deceive have no grounds for demurrer because the indictment does not literally follow the words defining the offence as contained in sec. 99 of the Bank Act. The indictment is sufficient if it contains all the essential allegations. REGINA v. WEIR, 3 C. C. C. 262.

BASTARDY.

1. **Committal to Gaol** — ORDER OF FILIATION — HABEAS CORPUS.]—Where a warrant of commitment under section 6 of the Bastardy Act, ch. 51, Revised Statutes of Canada, directed detention until the accused should be "discharged in due course of law," the accused was discharged under habeas corpus, the words "in due course of law" being unauthorized by the Statute by which the committal was required to be until an order of filiation should be made or refused. EX PARTE O'DONNELL, 7 C. C. C. 367.

BAWDY HOUSE.

1. **Charge of Keeping** — WOMAN LIVING ALONE — CODE SEC. 195-198.]—Defendant was convicted of keeping a bawdy house. The evidence shewed that the accused lived by herself, and had been and was still reputed to be a prostitute. It was shewn that on two different occasions the defendant was visited by two different prostitutes, but it was not shewn that men accompanied them, or were in the house during such visits. Held, on motion for habeas corpus that the conviction must be quashed. Section 195 of the Code should be construed as intended merely to define the nature of the premises within which a bawdy house may be kept, and not as stating what acts constitute the keeping of it. R. v. OSBERG, 9 C. C. C. 180, 15 Man. L. R. 147.

2. **Charge of Keeping** — PLACE OF RESORT FOR BOTH SEXES — CRIM. CODE SEC. 195-198.]—To constitute the offence of unlawfully keeping a bawdy house or brothel, it must be shewn to be a place resorted to by persons of both sexes, for the purpose of prostitution. It does not extend to a case where a woman alone receives a number of men. R. v. YOUNG, 6 C. C. C. 43, 11 Man. L. R. 58.

3. **Description of the Offence** — UNCERTAINTY — CONSENT — CODE SEC. 195-198-786.]—Defendant was charged with "keeping a disorderly house, that is to say a common bawdy house, on Albemarle Street, etc." 1. Held per Townsend, J., that the description was sufficient under Code sec. 198 as Code sec. 195 defines what the law means by a bawdy house

and it is not necessary to insert whether it was a "house, room, or set of rooms," etc. 2. That the locality was sufficiently described as on Albemarle Street, in the city of Halifax, it being clearly a place within the jurisdiction of the Court. 1. Per Weatherbe, J., sec. 195 defines what is meant by a bawdy house, and it enlarges the meaning as formerly understood, and the said section must be resorted to to describe the crime and give the proper notice. 2. Per Weatherbe, J., the option of a jury trial as required by sec. 786 ought to be placed before the accused by the magistrate before obtaining consent to a summary trial. R. v. SHEPHERD, 6 C. C. C. 463.

4. **Evidence of General Reputation of.**]—Whilst upon a charge of being an inmate of a bawdy house evidence of the general reputation of the house has been held to be admissible, the proper way of proving the charge is by evidence of particular facts. The conduct of the inmates when arrested, and what they said are not improper to be considered. THE QUEEN v. ST. CLAIRE, 3 C. C. C. p. 551. 27 A. R. 308. 20 C. L. T. Occ. N. 204.

5. **Indictment** — ALTERNATIVE PROCEDURE BY SUMMARY CONVICTION — CODE SEC. 198-207-783.]—Section 198 of the Code was not repealed by sec. 207 [j] or sec. 783 of the Code. Section 783 [f] is pure procedure and enables the offence of keeping a common bawdy house to be disposed of by a summary trial. Section 207 and 208 deal with summary convictions. The different sections give to the prosecution an alternative of proceeding before either tribunal. R. v. SMITH, 9 C. C. C. 338.

6. **Inmate of.**— DEPOSITIONS ON PREVIOUS TRIAL OF KEEPER ADMISSIBLE BY CONSENT.]—Where upon a charge against an inmate of a bawdy house, the accused consented that the depositions given on a previous charge against the keeper of the house, who had been convicted, should be read and taken as having been given pro and con on the charge against herself, it was held that such consent was effectual to admit the depositions on the charge against such inmate. THE QUEEN v. ST. CLAIRE, 3 C. C. C. p. 551, 20 Occ. N. 204, 27 A. R. 308

7. **Inmate of** — DEFECTIVE CONVICTION — CODE SEC. 783-786.]—Defendant pleaded guilty to a charge of being an inmate of a disorderly house, and was finded $90 with $6.25 costs. The conviction was in form W. W. under Part LVIII., and omitted the words "being charged before me the undersigned." Held, 1. A single Judge in the North West Territories has jurisdiction to hear an application to quash a conviction where no writ of certiorari has been issued, if the conviction has been returned pursuant to the provisions of the statute in that behalf. 2. The defendant having been charged before the magistrate with the offence, the omission of a statement to that effect in the conviction is not a defect which renders the conviction void under Part LV. It is not required that the forms shall be strictly adhered to. R. v. AMES, 10 C. C. C. 52, 5 Terr. L. R. 492.

8. **Keeper of** — SUMMARY TRIAL.]—An accused charged in an information as the keeper of a disorderly house, that is to say, a common bawdy house, cannot be tried summarily without consent. THE KING v. KEEPING, 4 Can. Crim. Cases, p. 494, 34 N. S. R. 442.

9. **Keeper of** — TERM OF IMPRISONMENT.]—The offence of being the keeper of a house of ill-fame is an indictable offence and a prisoner may be sentenced under sec. 198 of the Code to one year's imprisonment, or apparently, under sec. 34 of Chap, 183 of the Revised Statutes of Canada, which is one of the statutes not repealed by the Code, to two years' imprisonment in the Andrew Mercer Reformatory. THE QUEEN v. SPOONER, 4 C. C. C. 209, 32 O. R. 451.

10. **Offence of Keeping** — WOMAN LIVING ALONE — CODE SEC. 195-8.]—Sec. 195 of the Code has not made any changes in the law as to what constitutes the offence of keeping a common bawdy house. One woman living alone, and receiving a number of men for the purposes of prostitution cannot be convicted of keeping a common bawdy house. The section merely defines the nature of the premises. R. v. MANNIX, 10 C. C. C. 151, 10 O. R. 303.

11. **Powers of Magistrate** — FINE.]—Upon conviction and fine for keeping a common bawdy house, the powers of the

magistrate for enforcing payment of the fine are limited to directing imprisonment for three months (Crim. Code sec. 872 (b) though the section of the Code under which the conviction was made authorizes imprisonment for six months in the first instance instead of a fine. (Crim. Code. sec. 258.) REGINA v. STAFFORD, 1 C. C. C. 239.

12. **Summary Trial Distinguished from Summary Conviction.**]—Where a conviction of an inmate of a house of ill-fame is made under Part LV. of the Code, the trial is a summary trial of an indictable offence and not a summary conviction. THE KING v. ROBERTS, 4 C. C. C. 254, 21 Occ. N. 314.

See also CONVICTION ; DISORDERLY HOUSE ; VAGRANCY ; SUMMARY TRIAL.

BENCH WARRANT.

Bench Warrant — SEAL.]—A bench warrant issued at the quarter sessions, tested in open sessions, and signed by the clerk of the peace :—Held, not invalid for want of a seal. FRASER v. DICKSON, 5 U. C. R. 231.

BIAS.

1. **Bias.**]—The fact that the magistrate is an honorary member of the Women's Christian Temperance Union, such membership being merely nominal, is not sufficient to disqualify him from sitting on the trial of a prosecution of illegal sale of liquor. REGINA v. HERRELL, 1 C. C. C. 510, 12 Man. L. R. 198, 522.

2. **Bias** — MAGISTRATE ENGAGED IN SAME BUSINESS AS DEFENDANT.]—A magistrate engaged in the same business as the defendant is disqualified to sit or adjudicate on the hearing of a charge of selling merchandise contrary to a by-law for licensing transient traders. REX v. LEESON, 5 C. C. C. 184.

3. **Bias** — MAGISTRATE MEMBER OF TEMPERANCE ALLIANCE — PROSECUTION UNDER TEMPERANCE ACT — BIAS.]—Prohibition was granted restraining the defendants from executing a conviction made against the plaintiff under the Canada Temperance Act, on it being proven that the convicting magistrates were members of the Dominion Temperance Alliance at the time the information was laid, and summons issued, though they had withdrawn from the Alliance before the hearing, and it also appearing that the said Alliance received all fines recovered by prosecution under the said Act pursuant to a resolution of the Municipal Council. DAIGNEAULT v. EMERSON, ET AL., 5 C. C. C. 534, Q. R. 20, S. C. 310.

4. **Bias** — POLICE MAGISTRATE — ADDITIONAL FEES FOR SERVICES IN ENFORCING CANADA TEMPERANCE ACT — PECUNIARY INTEREST.]—The fact that a police magistrate receives an additional fee for his services in enforcing the Canada Temperance Act does not disqualify him on the ground of pecuniary interest from adjudicating upon an offence under that Act.—EX PARTE McCOY, 1 C. C. C. 410, 33 N. B. R. 605.

See also JUSTICE OF THE PEACE.

BIGAMY.

1. **Absence of First Husband** — KNOWLEDGE OF PRISONER OF FIRST HUSBAND BEING ALIVE — BURDEN OF PROOF OF KNOWLEDGE ON PROSECUTION.]—Question submitted for opinion of the Court : Whether the presiding Judge rightly instructed the jury that the evidence adduced on the trial of the prisoner, who was indicted for bigamy in marrying one George Carr in the lifetime of her husband William Debay, did not raise any presumption of the death of Debay, and that the prisoner was not aware when she married Carr that Debay was living. On the part of the prosecution Debay was proved to have been seen in the United States after the second marriage, about three weeks before the trial ; and on the part of the defence that eight years before trial the prisoner and other husband separated, he having turned her out of doors, and never lived with her since. The Dominion statute, under which prisoner was indicted, provides that nothing therein contained shall extend to any person marrying a second time, whose husband or wife has been continually absent from such person for the space of seven years, then last past

and was not known by such person to be living within that time :—Held, that the absence contemplated by the statute is not necessarily an absence from the country. It is sufficient for the prisoner to prove the absence of Debay from her, such an absence as would lead to the inference that she did not know of his residence and whether he was alive or dead. Held, an absence of this kind was shown in this case. That such evidence was adduced as should have been left to the jury and from which they certainly might have found such an absence. Held, that burden of proving that prisoner knew of Debay's being alive during the seven years was on the prosecution. Held, by all the Judges, that conviction must be quashed. QUEEN v. ANNIE DEBAY, 3 N. S. R. 549.

2. **British Subject Resident in Canada Contracting Second Marriage Abroad** — R. S. C. CH. 161, SEC. 4 — ULTRA VIRES — CONSTITUTIONALITY — REPUGNANCY TO IMPERIAL LEGISLATION — DOMINION PARLIAMENT — PROOF OF FOREIGN LAW — PROOF OF SECOND MARRIAGE.]—Held, that 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 person 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. Per Boyd, C., 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. 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. Per Boyd, C., In 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. REG v. BRIERLY, 14 O. R. 525.

3. **Constitutional Law.**]—Sections 275 and 276 of the Criminal Code, 1892, respecting the offence of bigamy, are intra vires of the Parliament of Canada. In re BIGAMY SECTIONS OF CRIMINAL CODE, 27 S. C. R. 461.

4. **Crim. Code Secs. 275, 276** — VALIDITY OF — JURISDICTION OF PARLIAMENT OF CANADA.]—Secs. 275 and 276 of the Criminal Code constituting the leaving of Canada by a British subject resident therein, with the intent to go through the form of bigamous marriage outside of Canada, an indictable offence, are ultra vires of the Parliament of Canada. Special case referred by the Governor-General in Council to the Supreme Court of Canada. In the matter of SEC. 275 and 276 OF THE CRIM. CODE, 1 C. C. C. 172.

5. **Defence** — DISSOLUTION OF FORMER MARRIAGE — DECREE OF FOREIGN COURT — VALIDITY — DOMICILE.]—Upon an indictment of the defendant for bigamy the defence was, that she had been divorced from her husband by the decree of a foreign court :—Held, that the marriage being a Canadian one, and the domicile of both parties being in Canada, and not having been changed, although they both resided for a short time in the foreign country previous to the making of the decree, the marriage was not dissolved, and the defence failed. Magurn v. Magurn, 3 O. R. 570, II. A. R. 178, and Lemesurier v. Lemesurier, (1895) A. C. 517, followed. REX v. WOODS, 23 Occ. N. 220, 6 O. L. R. 41, 2 O. W. R. 338.

6. **Domicile** — JURISDICTION — DIVORCE.]—The domicile of the married pair affords the only true test of jurisdiction to dissolve their marriage, and a divorce pronounced by a Court within whose forum the parties were not domiciled, does not constitute a defence to an indictment against either. REX v. WOODS, 7 C. C. C. 226, 6 O. L. R. 41.

7. **First Wife's Absence.**]—Where the prisoner relies on the first wife's lengthened absence, and his ignorance of her being alive, he must shew inquiries made and that he had reason to believe her dead, more especially when he has deserted her ; and this, notwithstanding that the first wife may have married again. Regina v. Smith, 14 U. C. R. 565.

8. **Foreign Marriage** — Proof of — Admisssion of Defendant — Corroborating Circumstances — Proof of License — Presumption.]—In a prosecution for bigamy, where there is a foreign marriage, the foreign law must be strictly proved. This, however, is not necessary where the marriage has been admitted by the defendant and there are corroborating circumstances strengthening the admission. The testimony of the minister who married parties, that he had a marriage license, which was brought to him by one of the parties ; that he duly returned the same; that all the forms of law were observed as required by the license, and that the marriage was performed according to the rites and ceremonies of his church is sufficient proof of the license having been issued, and returned, and of the marriage having been duly solemnized. Wilkins, J., doubting. In this case the first alleged marriage was contracted in Boston, Mass., and no proof whatever was given of the marriage law of Massachusetts. There was evidence, however, by a witness present thereat, of a marriage ceremony and of subsequent cohabitation as man and wife. Another witness testified as follows : "I spoke to the defendant at Parrsboro'. A woman claiming to be his wife was looking after him. She is now present. I asked him what made him leave his wife in the States and marry another woman at Parrsboro'. He said he did not think his wife would follow him from the States. He thought she would never trouble him ; but as long as she had followed him, he would take her and support her as long as they lived. We were old acquaintances and I asked him about his wife who was claiming him." Held, that there was no necessity for proof of the marriage law of Massachusetts, as the marriage was sufficiently proved by the admission of the defendant and the corroborating circumstances. Queen v. Henry P. Allan, 2 Old., N. S. R. 373.

9. **Mens Rea** — Code Sec. 7-275.]—A guilty mind is necessarily implied as an essential ingredient of the offence of bigamy, under the Code ; if therefore the accused had an honest and reasonable belief that she was unmarried before she went through the form of marriage [the subject of the charge,] it would be a good defence. R. v. Sellers, 9 C. C. C. 153.

10. Proof of Foreign Marriage.]—The witness called to prove the first marriage swore that it was solemnized by a justice of the peace in the State of New York, who had power to marry, but this witness was not a lawyer nor inhabitant of the United States, and did not state how the authority of the justice was derived :—Held, insufficient. Regina v. Smith, 14 U. C. R. 565.

11. **Proof of 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 this first marriage is not evidence upon which he can be convicted. Regina v. Ray, 20 O. R. 212.

12. **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 a trustee and to receive and pay over the rents and profits, but B. never paid anything over, nor had he ever written to or heard from such alleged wife :—Held, that not sufficient evidence to prove the alleged prior marriage. Regina v. Duff, 29 C. P. 255.

13. **Second Marriage Contracted Out of Canada** — Mis-Direction — Non-Direction — Sufficiency of Indictment — Nullity.]—The prisoner was convicted of bigamy under 32 & 33 Vic. ch. 20, sec. 58, which enacts that whosoever, being married, marries any other person during the life of the former hus-

band 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 left Canada with intent to commit the offence, and :—Held, that it was incumbent on the Crown to prove these matters. Quaere per Wilson, C. J., whether the trial should not have been declared a nullity. REGINA V. PIERCE, 13 O. R. 226.

14. **Second Marriage in Canada** — EVIDENCE.]—Held, that R. S. C. c. 161, ss. 4, which enacts that every person 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 person 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. REGINA V. BRIERLY, 14 O. R. 525.

15. **Second Marriage.**]—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 communication with the Secretary of State regarding those 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. IB.

16. **Second Marriage.**]—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. GRIFFEN, 14 Cox C. C. 308, followed. IB.

17. **Second Marriage.**]—Convictions for bigamy quashed where the second marriage took place in a foreign country, and there was evidence that the defendant, who was a British subject, resident in Canada, left there with the intent to commit the offence. The provisions of s. 275 of the Criminal Code, making such a marriage an offence, are ultra vires the Parliament of Canada. Macleod v. Attorney-General for New South Wales (1891) A. C. 455 followed. REGINA V. PLOWMAN, 25 O. R. 656.

18. **Solemnization of the Marriage.**]—It is not necessary that marriage shall be solemnized in a church. Where banns have been published, and no dissent then expressed by parents or guardians, the husband being under age is no objection even by the English Marriage Act ; but, quaere, whether that Act is in force here. REGINA V. SECKER, 14 U. C. R. 604.

19. **Wife's Evidence.**]—The first wife is not admissible as a witness to prove that her marriage with the prisoner was invalid. REGINA V. MADDEN, 14 U. C. R. 588.

20. The evidence of the first wife is not admissible, nor is that of the second until the first marriage is proved. REGINA V. TUBBEE, 1 P. R. 98.

BLACKMAIL.

Threatening Letter — CODE SEC. 406.] —The word "offence" as used in sec. 406 of the Code applies to offences against local or Provincial statutes, as well as against Dominion Acts, and is not confined to offences against the Criminal Code only. R. v. DIXON, 2 C. C. C. 589, 28 N. S. R. 82.

BLASPHEMOUS LANGUAGE.

A conviction by a magistrate, stated that defendant did on, etc., at etc., being a public highway, use blasphemous language, contrary to a certain by-law, which was passed almost in the words of C. S. U. C. c. 54, s. 282, s.-s. 4; but, there was no statement of the words used:—Held, bad. Semble, also, that there was nothing in the evidence set out giving the magistrate jurisdiction to act. In re Donelly, 20 C. P. 165.

BRIBERY.

1. **Conspiracy to Bribe Members of Parliament** — Pleading.]—On demurrer to an indictment [set out below] 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 misdemeanor at common law, and as such indictable. 2. That the jurisdiction given to the Legislature by R. S. O. 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 misdemeanor. 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. Per O'Connor, J., 1. That the bribery of a member of Parliament, in a matter concerning Parliament or Parliamentary business, is not an indictable offence at common law, and has not been made so by any statute. 2. That in all matters and offences done in contravention of the law and constitution of Parliament, with the exception of treason, felony and breaches of the peace, Parliament, alone has jurisdiction, and the ordinary courts, civil and criminal, have no jurisdiction. 3. That the lex et consuetudo Parliamenti reserves to the Hight Court of Parliament exclusive jurisdiction to deal with all matters relating to its own dignity, or concerning its powers, its members and its business, with the above three exceptions. Regina v. Bunting, 7 O. R. 534.

2. **Municipal Election.**]—Where a statute relating to municipal elections made no provisions to repress bribery:—Held, that it would no doubt be an indictable offence. Regina ex rel. McKeon v. Hogg, 15 U. C. R. 140.

BURGLARY.

1. **Attempt.**]—The prisoners being indicted for an attempt to commit burglary it appeared that they had agreed to commit the offence on a certain night, together with one C., but C. was kept away by his father, who had discovered their design. The two were seen about twelve that night to come within about thirteen feet of the house, towards a picket fence in front, in which there was a gate; but without entering this gate they went, as was supposed, to the rear of the house, and were not seen afterwards. Afterwards, about two o'clock, some persons came to the front door and turned the knob, but went off on being alarmed, and were not identified:—Held, that there was no evidence of an attempt to commit the offence, no overt act directly approximating to its execution; and that a conviction, therefore, could not be sustained. Regina v. McCann, 28 U. C. R. 514.

2. **Attempt.**]—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 to 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. c. 19, s. 9, was properly convicted. Regina v. Esmonde, 26 U. C. R. 152.

3. **Habeas Corpus** — Magistrate — Jurisdiction.]—The further detention of a prisoner will not be ordered upon habeas corpus proceedings where a magistrate upon a charge of burglary, without jurisdiction summarily tried and convicted the prisoner. Rex v. Blucher, 7 C. C. C. 278.

4. **Mis-Direction, New Trial.**]—Upon a charge of burglary, where it was proved that one window partly open had been raised higher and another window, which had been closed was found wide open, a direction to the jury that an entrance by either window constituted the crime was erroneous and constituted a substantial wrong for which a new trial would be granted. THE KING v. BURNS, 7 C.C.C. 95, 36 N. S. R. 257.

5. **Possession of Stolen Property** — JURY —POLLING OF—PRISONER'S FAILURE TO TESTIFY — COMMENT ON — CODE SEC. 410-728.]—1. When the jury is polled one or more jurors may dissent from the verdict as announced, which will make it impossible to give a valid verdict ; but the jury may be sent back for further deliberation, when they may, if all subsequently agree, render a verdict similar to the former finding, or quite different from it. 2. Where in the charge to the jury, the trial Judge stated to the jury, [in referring to a witness called by the defence], " If you do not see fit to believe her, then you are brought face to face with the fact that the prisoner is found in possession of a stolen pouch, and that he has not given a satisfactory account of how he came into possession of it.":—Held, that such comment was not a comment on the failure of the prisoner to testify within the meaning of the Canada Evidence Act. R. v. BURDELL, 10 C. C. C. 365.

See also HOUSE BREAKING ; ROBBERY.

BURIAL.

Burial — OF DEAD BODY — CODE SEC. 206.]—Every dead human body must be buried, and the neglect to decently bury a dead body, when the office is once undertaken by any person, even though such person is not the party on whom the duty prima facie rests, is an indictable offence under sec. 206 of the Criminal Code. R. v. NEWCOMB, 2 C. C. C. 255.

CANADA EVIDENCE ACT.

1. **Comment**—BY CROWN ON FAILURE OF WIFE TO TESTIFY.—The provision of the law requiring that no comment shall be made by the Judge or the prosecuting counsel on the failure of a wife to testify on behalf of an accused husband is mandatory, and where the comment of prosecuting counsel was in answer to an explanation by defendant's counsel excusing the prisoner for not calling his wife as a witness in his behalf, such comment by prosecuting counsel was held to be irregular, and a new trial was granted. REX v. HILL, 7 C.C.C. 38. 36 N. S. R. 240.

2. **Criminating Answer**—SEC. 5—FAILURE TO TAKE OBJECTION—ADMISSIBILITY AT TRIAL.]—Criminating evidence given by the prisoner on a coroner's inquest is not admissible against him on the trial. Under sec. 5 of the Canada Evidence Act prior to the amendment of 1898, it is not necessary to take the objection that the answer may be criminating, but the above section protects the witness by not allowing whatever he may be obliged to swear to, to be given in evidence thereafter against him in any criminal proceedings except perjury, etc. REGINA v. HAMMOND, 1 C. C. C. 373. 29 O. R. 211.

3. **Manslaughter**—COMMENT AS TO FAILURE TO ACCOUNT FOR PARTICULAR OCCURRENCE.]—On a charge of manslaughter it is not misdirection for the presiding Judge to instruct the jury that the accused has failed to account for a particular occurrence when the onus is cast on him to do so. The instruction merely amounted to charging the jury on a question of law. REX v. AHO, 8 C. C. C. 453, B. C.

4. **Failure of Wife of Accused to Testify** —COMMENT BY COUNSEL.]—Comment by counsel as to failure of the wife of accused to testify having been made during the trial and sec. 4 of the Canada Evidence Act being thereby violated, the verdict was set aside, and a new trial ordered. REGINA v. CORBY, 1 C. C. C. 457, 30 N. S. R. 330.

5. **Witness Incriminating Himself**—SEC. 5 CANADA EVIDENCE ACT.]—Section 5 of the Canada Evidence Act applies only when the witness is being examined in a criminal proceeding or on some civil proceeding respecting which the Parliament of Canada has authority to determine the admissibility of the evidence. In proceedings and matters over which the Provincial Legislatures have juris-

diction it is for these legislatures to decide what shall excuse a witness from answering questions. REGINA v. DOUGLAS, 1 C. C. C. 221, 11 Man. L. R. 401.

See also JUDGES' CHARGE; NEW TRIAL; PRISONER.

CANADA TEMPERANCE ACT.

See INTOXICATING LIQUORS.

CARNAL KNOWLEDGE.

1. **Girl under 14**—FORM OF INDICTMENT.]—Indictment that the prisoner "in 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 showed 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 the age of 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. REGINA v. CHISHOLM [Jacob's Case] 7 Man. L. R. 613.

2. **Girl under Fourteen**—FORM OF INDICTMENT—CONVICTION FOR INDECENT ASSAULT—CONSENT.]—Indictment that the prisoner "in and upon one R., a girl under the age of fourteen years,...... feloniously did make an assault, and her, the said R., then and there feloniously did unlawfully and carnally know and abuse," etc. The evidence showed that the girl was between the ages of eight and nine years, and that the acts complained of were committed with her tacit consent, which consent was not procured by force or intimidation. The jury acquitted the prisoner of the felony charged, but under 53 Vict., c. 37, s. 13, s-s. 4 and s. 7 [D. 1890], found him guilty of indecent assault. Held, that the conviction was right. Held, also, that the indictment by virtue of sec. 13, sub-sec. 4, included and carried with it a charge of indecent assault within the meaning of sec. 7 of said Act, and that the consent of the girl was no bar to a conviction for indecent assault. REGINA v. BRICE, 7 Man. L. R. 627.

3. **Indecent Assault**—SUMMARY TRIAL.]—The acquittal of an accused tried summarily by consent before a police magistrate, on a charge of carnal knowledge of a girl under fourteen years is a bar to a fresh charge for indecent assault, as the greater offence includes the lesser of a kindred kind. REX v. CAMERON, 4 C. C. C. 385.

See also ASSAULT; SEDUCTION; RAPE.

CASE STATED.

1. **Certiorari**—APPEAL TO FULL COURT FROM DECISION OF SINGLE JUDGE ON STATED CASE.]—Defendant was convicted for an infraction of the Indian Act, and obtained a stated case, under sec. 900 of the Code, electing to go before a single Judge. The conviction being upheld, application for a rule nisi returnable before the full Court was made and granted. Held, by the full Court, That the motion was in effect, an appeal from the decision of a single Judge, upon the case stated, and no such appeal is contemplated by the provisions of the Code; that the grounds of the motion were the same as on the stated case, and were therefore res judicata. R. v. MONAGHAN, 2 C. C. C. 488, 5 Terr. L. R. 495.

2. **Invalid Request**—CODE SEC. 900.]—Defendant had been convicted for selling liquor without a license. The request for a stated case, merely asked "to state and sign a case under the provisions of subsec. 2 of sec. 900 of the Criminal Code, and the rules of Court, in accordance therewith." Held, that the request was insufficient, in that it did not ask to state and sign a case in writing setting forth the facts, and the grounds on which the proceeding is questioned. R. v EARLEY, (No. 2) 10 C. C. C. 336.

3. **New Trial**—NO LEAVE TO APPLY FOR—WEIGHT OF EVIDENCE.]—The Trial Judge on a stated case not having given leave to apply for a new trial on the

ground that the verdict was against the weight of evidence, the Court of Appeal has no jurisdiction to interfere if there was in point of law, evidence which had been considered and weighed by the Judge sitting as a jury. REX v. CLARK, 5 C. C. C. 235, 3 O. L. R. 176.

4. **Ontario Summary Convictions Act**—APPEAL BY WAY OF STATED CASE.]—Title VII. Part XLVIII. of the Can. Crim. Code contains all the provisions as to summary convictions. Sec. 900 prescribes the practice upon the statement of a case by a magistrate. The internal evidence supplied by this latter section shows that the proceeding is regarded as an appeal. The Ontario Summary Convictions Act R. S. O. 1887 c. 74, appears to incorporate into provincial law, all the enactments of the Dominion law relating to procedure on Summary Convictions, except that procedure in appeals shall not be affected. Therefore appeals from convictions under Ontario laws are to be lodged and prosecuted as provided by the provincial enactment and are withheld from being subject to Dominion Legislation. REG. v. R. SIMPSON CO. LTD. 2 C. C. C. 275, 28 O. R. 231.

5. **Procedure under Code Sec. 900**—CONDITION PRECEDENT.]—The request for a stated case requested the justices "to state and sign a case setting forth the grounds on which the said conviction is supported." Held, that it was not a sufficient request within subsec. 2 of the Code sec. 900, which requires that the justices be requested to set forth the facts of the case or the grounds upon which the conviction is questioned; and that the fact of the justices having stated a case did not operate as a waiver of the provisions of the section. R. v. EARLEY, (No. 1.) 10 C. C. C. 280.

6. **Service of Notice of Hearing on Solicitor.**]—Where an accused had been acquitted of manslaughter, and the Crown served the solicitor who had acted for the accused at the trial, with a notice of the hearing of a stated case, and no one appeared for the defendant at the hearing, it was held that there was a presumption that the authority of the solicitor had ceased with the discharge of the prisoner from custody, and as the defendant had not been served personally, there was no cause pending which the Appellate Court could hear. REGINA v. WILLIAMS, 3 C. C. C. 9, 28 O. R. 583.

7. **Summary Conviction**—APPEAL TAKEN TO COUNTY COURT—RES JUDICATA—NO POWER THEREAFTER TO STATE A CASE—CODE SEC. 879.]—The defendant was summarily convicted before a stipendiary magistrate for violating certain regulations under the Fisheries Act of Canada. Under Code sec. 879 he appealed to the County Court and the conviction was affirmed. The defendant then asked the magistrate to state a case. Held, That the judgment of the County Court from which no appeal lies was res judicata, and no case could be stated at that stage. R. v. TOWNSHEND, 6 C. C. C. 519, 35 N. S. R. 401.

8. **Summary Conviction** — CODE SEC. 900.]—On a stated case argument must be limited to questions of law arising, formally set out in the case stated by the justice, and which have been taken before him at the trial. R. v. NUGENT, 9 C. C. C. 1.

See also APPEAL; CONVICTION; CROWN CASE RESERVED; RESERVED CASE.

CATTLE STEALING.

1. **Trial by Jury, Right to**—N. W. T. ACT.]—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 $200.00, has not the right to be tried by jury. THE QUEEN v. PACHAL, 4 Terr. L. R. 310.

See also ROBBERY; THEFT.

CERTIORARI.

I. AMENDMENT.
II. COSTS.
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IV. PRELIMINARY OBJECTIONS.
V. PRACTICE AND PROCEDURE.
  1. Delay in Application.
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(a) Bias.
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4. Ministerial or Judicial Acts.
5. Review or Appeal.
6. Waiver.
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VIII. Service.

I. Amendment.

1. **Amending Conviction.**]—Held, that an amended conviction cannot be put in after the return of a writ of certiorari. Regina v. MacKenzie, 6 O. R. 165.

2. **Power to Amend Defective Conviction.**]—A defective conviction brought up on certiorari, whether in aid of a writ of habeas corpus or on motion to quash the conviction, can be amended. Regina v. Murdock, 4 C. C. C. 82, 27 A. R. 443.

3. **Power to Amend Conviction.**]—The Court under sec. 889 has the right to adjudicate de novo on the evidence given before the magistrate, but the Court should not amend a conviction if in so doing it has to exercise the discretion of the magistrate. Regina v. Whiffen, 4 C. C. C. 141.

4. **Power to Amend Conviction.**]—A magistrate can amend his conviction at any time before the return of the certiorari. Regina v. McCarthy, 11 O. R. 657.

II. Costs.

1. **Abandonment of Excess upon Particulars.**]—In an action in a parish Court where the plaintiff's claim exceeds the amount over which the Court has jurisdiction, he may by abandonment of excess upon the particulars filed, bring the case within the jurisdiction of the Court. Where the plaintiff in an action of debt in a parish Court was improperly nonsuited—no evidence having been given by the defendant—Held, per Wetmore and King, J. J. [Palmer, J., dissenting], that a Judge on review had power to order judgment to be entered for the plaintiff for the amount proved at the trial. Held, per Weldon, J., That an order of a Judge of a County Court in a case of review was final, and that a certiorari would not lie to remove it into this Court. Per Wetmore and King, J. J., that a certiorari would not lie in such a case. Per Palmer, J., that though the order of the Judge of the County Court was wrong, if he had jurisdiction to make it, a certiorari would not lie to remove it into this Court. The Court has no power to grant costs in discharging a rule nisi for a certiorari, unless such power is given by statute. Ex parte Simpson, 22, N. B. R. 132.

2. **Against Prosecutor.**]—The awarding or withholding of costs on certiorari in England depends on statutory provisions. Whether or not those provisions have been sufficiently adopted here to make the English rule apply, has not been judicially determined. The practice of the Court has always been to award costs against the prosecutor to a defendant bringing up a conviction and succeeding, and he is unquestionably liable for costs if he fails Per Ritchie, J., The enactments of ths Province are sufficiently similar to those of England to make the English decisions apply. Though a defendant failing to get a conviction quashed is liable for costs yet if he succeeds he is not entitled to recover costs against the prosecutor. Regina v. Freeman, 21 N. S. R. 483.

3. **Canada Temperance Act, 1878**—Conviction for Third Offence made in Absence of Defendant set aside—Procedure under Hawes v. Hart Confirmed.]—Defendant was convicted in her absence of a third offence against the Canada Temperance Act, 1878, and was sentenced to imprisonment for sixty days in the county jail at Annapolis, and to pay the sum of $9.33 costs to the prosecutor, and in default to be imprisoned for a further term of fifteen days :—Held, that the magistrate had exceeded his jurisdiction in making the conviction in the absence of the defendant, and that the conviction must therefore be set aside. Also, that under the Canada Temperance Act, sec. 107, it is imperative upon the Magistrate to adopt the procedure specially made for cases under the Act, the express provisions in that section taking

the matter out of the ordinary course laid down in the Summary Convictions Act. Per Townshend, J., the decision in Hawes v. Hart, 6 R. & G. 42, settles the right of the Court on a motion to quash a conviction to inquire into the matter so far as to be satisfied whether the court below had jurisdiction or not. QUEEN v. SALTER, 20 N. S. R., [8 R. & G.], 206; 8 C. L. T., 380.

4. **Conviction.**]—When a rule nisi for a certiorari to remove a conviction is discharged, the successful party is not entitled to the costs of opposing the rule. EX PARTE DALEY, 1 All. N. B. R. 435.

5. **Costs included in Conviction under Canada Temperance Act, 1878**—CONVICTION QUASHED.]—Defendant was convicted for selling intoxicating liquors contrary to the provisions of the Canada Temperance Act, 1878, and adjudged to pay the sum of $50 to be paid and applied according to law, also to pay the informant the sum of $6.14 costs; and if such sums were not paid forthwith that the same be levied by distress and sale of defendant's foods, and in default of distress that defendant be imprisoned in the common jail for the space of 30 days, unless the sums and charges of the distress and commitment, if any, were sooner paid :—Held, per Ritchie, J., that there was sufficient ground for a certiorari. Per Weatherbe, J., that the conviction was bad. Quaere, whether under the practice the writ of certiorari should not have been allowed in the first instance without any rule nisi. QUEEN v. WARD, 20 N. S. R., [8 R. & G.] 108.

6. **Costs on Certiorari Refused** — GROUNDS OF REFUSAL.]—Rule to quash certiorari made absolute without costs, on the ground that plaintiff's right to a certiorari had been upheld in point of law, but that the affidavit on which it was granted did not disclose sufficient grounds. IN RE ASSESSMENT OF BANK OF N. S., 3 R. & C., N. S. R. 32.

7. **Excessive Mileage**—NO GROUND FOR QUASHING SUMMARY CONVICTION.]—On motion for an order for a certiorari on the ground that the magistrate exceeded his jurisdiction by directing the defendant to pay costs in excess of those allowed by the tariff of fees under sec. 871 of the Criminal Code, amounting to $33.05. Costs were taxed for travel in serving each witness, though they all lived on the same route. Held, that even if the costs taxed in excess of what is authorized by the Code, the jurisdiction of the magistrate is not thereby affected. Following ex parte Howard 32 N. B. R. 237. EX PARTE RAYWORTH, 2 C. C. C. 230, 34 N. B. R. 74.

8. **Fees for Respondent.**]—The respondent or the mis-encause upon the motion for a certiorari is not entitled to a fee. 2. Upon such a motion a fee upon the hearing will not be taxed. 3. A respondent who does not contest the motion has no right to a fee for appearing. WING TEE v. CHOQUET, 6 Q. P. R. 305.

9. **Jurisdiction**—HIGH COURT (Ont.)]—There is no jurisdiction to give costs to the applicant against the prosecutor or magistrate on a motion to quash a conviction in a criminal matter, and not merely for a penalty imposed by or under Provincial legislation. REX v. BENNETT, 5 C. C. C. 456, 4 O. L. R. 205 (1902).

10. **Magistrates Disqualified**—COSTS.]—Conviction for cruelty to animals quashed, one of the Justices being the father of the complainant. Costs in this case, which was brought before the court by certiorari, refused against the magistrates, but granted against the complainant. IN RE D. BARRY HOLMAN, 3 R. & C., 375.

11. **Motion for, Opposed**—COSTS AGAINST MAGISTRATE AND PROSECUTOR.]—A motion for certiorari having been granted and a conviction quashed, costs were awarded against the convicting stipendiary magistrate and the prosecutor, who opposed the motion. REGINA v. SARAH SMITH, 31 N. S. R. 468.

12. **Order in Criminal Case Refusing Writ of Certiorari, with Costs, held Bad**—APPLICATION TO RESCIND THE PORTION OF ORDER RELATING TO COSTS SUSTAINED.]—Defendants having been convicted of an offence under the Dominion Statute in relation to cruelty to animals, an application was made to a Judge of the Supreme Court for an order for a writ of certiorari to remove the conviction into the Supreme Court. An order having been made refusing the order applied for with costs. Held, that the offence being clearly of a criminal nature, in the

absence of any authority authorizing the Judge to impose costs, or of any bail or recognizance to pay them, the defendants could not be made to pay the prosecutor's costs of opposing the order for the certiorari. An application was made to the court to rescind that portion of the order relating to costs, a smiilar application having been previously made to the Judge and refused. Held, that there being clearly no appeal in such a case, the course adopted by the defendants' counsel of applying to the court to rescind was the proper one. RE RICE, 20 N. S. R. [8 R. & G.], 437, 9 C. L. T., 198.

13. **Practice in British Columbia of Awarding Costs.**]—The old rule in certiorari proceedings that the Crown neither pays nor receives costs is no longer in force, and the Crown will grant the costs of a successful appeal to the Crown if asked for. 2. The court will not, except in special circumstances, grant leave of appeal to the Judicial Committee of the Privy Council, on the question of constitutionality of a local statute, when the same matter is under appeal to the Privy Council in a civil matter though not between the same parties. R. v. LITTLE, 6 B. C. R. 321, 2 C. C. C. 240.

14. **Security for Costs**—SCHOOL ACT—PROVISIONS OF OTHER ACT—APPLICATION OF.]—The provisions in the School Act, 21 Vict. c. 9, s. 16, that the proceedings for levying and collecting assessments shall be the same as provided for county and parish rates, applies to the mode, machinery and forms by which those rates are levied and collected, and does not require security to be given for costs before certiorari is granted to remove the assessment, nor give an appeal to the Sessions, as provided in the case of county rates by Rev. Stat. c. 53, s.-s. 6, 22. REGINA V. JARDINE, 5 All. N. B. R. 269.

2. The provisions of 1 Rev. Stat. c. 53, s. 6, requiring security for costs before granting a certiorari to remove a rate, is not incorporated in the Parish School Act. REG. V. ASSESSORS OF RATES, King's County, 1 Han. N. B. R. 528.

15. **Costs.**]—Where an indictment for obstructing a highway had been removed by certiorari, at the instance of the private prosecutor, into this court, and the defendant had been acquitted :—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 the postponement of the trial or a new trial. REGINA V. HART, 45 U. C. R. 1.

III. JURISDICTION.

1. **Application for Writ to Single Judge, and Afterward to Court**—PRACTICE—DISCRETION—CERTIORARI WHERE RIGHT OF APPEAL NOT LOST.]—The defendants E. R. and H. R., his wife were jointly convicted before the Stipendiary Magistrate for Police District No. 3, in the County of Annapolis, for having wantonly, cruelly and unnecessarily beaten, ill-used and abused a pair of oxen, the property of J. W. D., and for such offence were adjudged to pay a fine of $20 with $22.46 for costs, and, in default, to be imprisoned, &c. The cause came before the court on appeal from the refusal of a Judge to allow a writ of certiorari, but a preliminary objection having been taken to the appeal in such a case, an application was made to the full Court for a certiorari on the same grounds and affidavits :—Held, per McDonald, C. J., and Townshend, J., that it was open to defendants to make such application. Also, that the offence of which the defendants were convicted was one which was single in its nature, and for which only one penalty could be awarded, but that the award of one fine against the two defendants was erroneous, and, on this ground, that the certiorari should issue. Per McDonald, J., that the order of the single Judge could not be got rid of except by way of appeal, the law constituting a single Judge, in such cases, a tribunal with original jurisdiction equal to that of the full court. Also, that the allowance or disallowance of the certiorari was entirely a matter within the discretion of the court or Judge applied to, and, such discretion having been exercised, the Court would not be justified in over-ruling his order. Per Ritchie, J., that the application to the full Court should not be entertained unless it were shown that the right of appeal had been lost. Also, that the allowance or disallowance of the writ was a matter of discretion from which there was no appeal. IN RE RICE, 20 N. S. R. (8 R. & G.), 294, 8 C. L. T. 448.

2. **Canadian Railway Act**—JURISDICTION OF JUSTICES.)—Sec. 283 of the Railway Act providing for the arrest by railway constables, of trespassers on the company's tracks, etc., and the taking of the offenders before justices appointed for any county or town, district or other local jurisdiction within which the railway passes and giving to such justice jurisdiction to try the offence the same as if committed within the limits of his local jurisdiction, applies only to cases where the constable arrests the offender and takes him before the justice. It does not therefore extend to a case where an information is laid, and a summons or warrant issued. R. v. HUGHES, 2 C. C. C. 333, 26 O. R. 486.

3. **County Court.**]—The County Court has no general or original jurisdiction to grant certiorari, but only where it has been specially conferred by statute, as for instance, in connection with the liberty of the subject, under c. 117 R. S. 5th series. Nor will an intention of the Legislature to confer such jurisdiction be inferred from sections of statutes indicating that the Legislature was erroneously acting on the belief that the court possessed it already. Writ of prohibition granted to restrain the County Court Judge from proceeding. ROSS v. BLAKE, 28 N. S. R. 543.

4. **County Court Judge**—REVIEW — WHERE JUDGE DOES NOT EXCEED HIS JURISDICTION.]—The decision of a County Court Judge in a review case, under consol. Stat. c. 60, is final, if he has jurisdiction over the matter, or has not exceeded his jurisdiction, and a certiorari will not be granted to bring up the proceedings. EX PARTE TURNER, 22 N. B. R. 634.

5. **Disputed Facts**—JURISDICTION.]—Where the proceedings before a magistrate are removed under 29 & 30 Vict. c. 45, the Judge is not to sit as a Court of appeal from the findings of the police magistrate upon the evidence which that officer has taken; if any fact found by the magistrate is disputed, and he would have no jurisdiction had he not found that fact, then the evidence may be looked at to see whether there was any thing to support his finding upon it; but if the jurisdiction to try the offence charged does not come in question as a part of the evidence, then the jurisdiction having attached, his finding is not reviewable as a general rule except upon an appeal. REGINA v. GREEN, 12 P. R. 373.

6. **Dom. Acts 1873, c. 129, s.-s. 53 & 116**]—Sections 53 & 116 of Chapter 129, Dominion Acts, of 1873, do not take away the jurisdiction of the Supreme Court by way of certiorari. HAWES v. HART, 2 R. & G., N. S. R. 427; 2 C. L. T., 312.

7. **Evidence before Magistrate.**]—The court upon certiorari cannot inquire into the evidence taken before a magistrate whose conviction is in review. WING TEE v. CHOQUETTE, 5 Q. P. R. 641.

8. **Evidence**—POWER TO LOOK AT EVIDENCE, WHEN SENT UP TO DETERMINE JURISDICTION—CONVICTION QUASHED—PRACTICE.]—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, 6 R. & G., 427, 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 boardinghouse, 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 the evidence was not sufficient to support the conviction. Quaere, 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. QUEEN v. McDONALD, 7 R. & G., N.S.R 336, 7 C. L. T. 376.

9. **Evidence**—RIGHT TO LOOK AT ON CERTIORARI.]—Counsel contended that questions as to the sufficiency of the evidence below can be raised on certiorari. Per Rigby, J., in the Colonial Bank of Australasia v. Willan L. R., 5 P. C., 417, it was expressly held that the only purpose for which you could look at it was to see whether there was any evidence. QUEEN v. LYONS, 5 R. & G., N. S. R. 201.

10. **Findings of Fact**—WHETHER REVIEWABLE BY HIGHER COURT—ONTARIO LIQUOR LICENSE ACT.]—The defendant was convicted before a police magistrate at the city of Toronto for unlawfully selling liquor under a shop license, in less quantity than three half pints. On a motion for certiorari to quash the conviction :—Held, that the Court has no power upon such a motion to review the decision of the magistrate in a matter within his jurisdiction. It was plainly a matter within the jurisdiction of a magistrate to determine, as a simple matter of fact, whether the defendant had or had not sold liquor in less quantity than three half pints, which as the holder of a shop license he was forbidden to do, and the Court cannot review his finding on that point. The Superior Court cannot quash an adjudication on the ground of an erroneous finding of fact within the competence of the Inferior Court to try, without assuming the functions of a court of appeal, and the power to retry a question which the lower court was competent to decide. R. v. CUNERTY, 2 C. C. C. 329, 26 O. R. 51.

11. **Findings of Fact**—SCIENTER—MENS REA.]—The applicant was convicted, under N. W. T. Act, s. 95, for having in his possession intoxicating liquors without the special permission in writing of the Lieutenant-Governor. On a motion for a certiorari to quash the conviction :—Held, [1] Following Barber v. Nottingham & Grantham Ry. Co., and R. v. Grant, that where the charge is one, which, if true, is within the magistrate's jurisdiction, the findings of fact by him are conclusive. [2] That, as the statute does not express knowledge by the accused of the intoxicating character of the liquor, to be an essential element of the offence, first, it was not necessary for the prosecution to allege or prove it; secondly, that it was necessary for the accused to prove not merely that he had no such knowledge, but that he had been misled without fault or carelessness on his part. THE QUEEN v. O'KELL, 1 Terr. L. R. 79.

12. **Inferior Court**—NO JURISDICTION IN—CERTIORARI WILL NOT LIE.]—The defendant, an insolvent debtor, under arrest on an execution issued out of the County Court, was discharged by two Commissioners under the Act of 1878, chapter 8, sec. 4. Under that section the plaintiff appealed to the Judge of the county court, while protesting against his jurisdiction :—Held, that where there is no jurisdiction in the inferior Court, which was the plaintiff's contention in this case, the whole proceedings are void and certiorari will not lie. O'BRIEN v. WALSH, 28 U. C. Q. B. 394, followed. O'CONNOR v. CONDON, 3 R. & G., N.S.R., 2.

Note.]—In O'Connor v. Condon and Fletcher v. Chisholm no attempt seems to have been made to mark the distinction between the case where certiorari is sought to remove proceedings from an inferior court, on the ground of want of jurisdiction, in order to continue such proceedings in the court to which removed, and the case where they are removed on the same ground in order to quash them. O'Brien v. Walsh decides that the proceedings cannot be removed to continue them where there is no jurisdiction below. O'Connor v. Condon and Fletcher v. Chisholm, decide that they cannot in such case be removed to quash them, and give as authority O'Brien v. Walsh.]

13. **Inferior Court**—NO JURISDICTION IN—CERTIORARI NOT PROPER REMEDY.]—A debtor was imprisoned on process issued out of the County Court, and was brought before commissioners, who ordered his discharge. An appeal was taken to a Court organized under the Act 1880, c. 2, sec. 111, but the order, though made by the clerk of the County Court, was signed by him as prothonotary. The preceedings were brought up by certiorari, and a rule taken to quash the certiorari, on the ground, among others, that as the Special Court had not been regularly organized, it had no jurisdiction, and certiorari would not lie :—Held, that the certiorari must be quashed. FLETCHER v. CHISHOLM, 3 R. & G., N.S.R. 1, 2 C. L. T. 600.

14. **In Matters of Dominion Jurisdiction.**]—The authority conferred by the Provincial Legislature on the County Court to grant certiorari must of necessity be limited to those matters over which it has jurisdiction, and clearly the Canada Temperance Act is not one of them. REGINA v. DECOSTE, 21 N. S. R. 216.

15. **Irregular Procedure**—INJUSTICE.]—The sole duty of the Superior Court upon a writ of certiorari is to ascertian if the inferior court has acted within the limits

of its jurisdiction, and if tin the procedure it has followed the forms and rules indicated by law; and a certiorari will not be sustained, on the ground that the procedure has been irregular, unless the petitioner demonstrates that he has suffered injustice. CARPENTIER v. LAPOINTE, 6 Q. P. R. 292.

16. **Judgment of City Court.**]—A certiorari lies to remove a judgment from the City Court of St. John; and the power will be exercised where the case involves questions as to the right to real property and the construction of statutes, though the amount in dispute is trifling. EX PARTE MCNEIL, 3 All. 493 N. B. R.

17. **Judge Supreme Court**—REVIEW—NEW TRIAL.]—A certiorari will not be granted to bring up the proceedings in review before a Judge of this court under the Consol. Stat. c. 60, the proper remedy being by motion to set aside the order. A Judge has no power to order a new trial in a review case under Consol. Stat. c. 60, s. 43. See new Act, 58 Vict. c. 21. EX PARTE KANE, vol. 21, 370, N. B. R.

18. **Jurisdiction**—WHERE NOT SHOWN ON CONVICTION—CANNOT LOOK AT INFORMATION, &c.]—On certiorari of a conviction the information and warrant cannot be looked at to see that an offence has been committed. WOODLOCK v. DICKIE, 6 R. & G. 86, 6 C. L. T. 142.

19. **Justice of the Peace**—JURISDICTION — INTEREST — STATUTE TAKING AWAY RIGHT—APPEAL—CROWN — DISCRETION.] —1. Certiorari and not appeal is the appropriate remedy to raise the question of want of jurisdiction, e.g., whether proper service has been made and jurisdiction over the person acquired, or whether the justice was disqualified through interest. 2. A statutory provision taking away the right to 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. 3. When there is a defect in the jurisdiction of justices or 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. 4. Even where 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. 5. 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. 6. 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 a sufficient ground for issuing it. 7. No more latitude is given the Court for the exercise of its discretion in granting or refusing a certiorari than in respect to other applications which are in the discretion of the court. RE RUGGLES, 35 N. S. Reps. 57, 5 C. C. C. 163.

20. **Nature and Grounds** — DISCRETIONARY.]—The granting of a certiorari to remove a conviction is a matter for the discretion of the Court; and, when a statute makes provision for an appeal from a summary conviction under it, that discretion should be exercised by refusing the writ, unless special circumstances are shown. REGINA v. HERRELL, 12 Man. L. R. 522.

21. **Nature and Grounds** — APPEAL.]—Where an appeal has been taken, certiorari will not lie except as to objections to jurisdiction. REGINA v. STARKEY, 7 Man. L. R. 43, 489.

22. **Nature and Grounds** — WHERE NO JURISDICTION.]—A Fiat for a writ of certiorari should not issue, as of course, if the Justice does not appear upon notice of an application for a summons that it should issue. Notwithstanding the statutory provision, a certiorari may issue where the justice has no jurisdiction. REGINA v. GALBRAITH, 6 Man. L. R. 14.

23. **New Trial in Review Under Consol. Stat. cap. 60, s. 45** — COUNTY COURT JUDGE.]—A Certiorari will lie to bring up the proceedings in review had before a County Court Judge under Consol. Stat. c. 60, if he had no jurisdiction to make the order. [Weldon, J., dissenting.] Per Weldon, J., the order of a Judge in a review case is final. A Judge has no power to order a new trial in a review case under Consol. Stat. c. 60, s. 45. See Act of Assembly, 1895, c. 21, as to granting new trial. EX PARTE FAHEY, Vol. 21, 392, N. B. R.

24. **Non-Compliance** — RULE 29.]—A Judge has no power to dispense with compliance with Rule 29 of the Crown Rules

which requires that " No notice of motion for a writ of certiorari shall be effectual, nor shall any writ be granted therein, unless the recognizance and affidavit of justification shall have been filed . . . . nor may he grant leave to file additional affidavits where those presented on motion are defective. McIsaac v. McNeil, 28 N. S. R. 424.

25. **Of Commissioner to Issue Certiorari Under Acts of 1882, Cap. 10, Must be Shown.**]—A writ of certiorari was issued to remove a conviction under the Canada Temperance Act. The writ was allowed by a Commissioner, and it was not shewn that there was no Supreme or County Court Judge in the county. [Acts of 1882, cap. 10, sec. 2.] Held, that the writ must be set aside, as it was not shewn that the Commissioner had jurisdiction to issue it. Per McDonald, C.J., and Weatherbe, J., that the indorsement " allowed, security having been first given and filed," was not sufficient. Corbett v. O'Dell, 4 R. & G., N. S. R. 144.

26. **Of Single Judge.**]—Held, following Regina v. Beemer, that a single Judge has no jurisdiction to hear and determine a motion to quash a conviction upon a writ of certiorari ; and that such writs must be issued from the office of the Registrar and be made returnable before the Court in banc. The Queen v. Smith, 1 Terr. L. R. 189.

27. **Of Supreme Court to Revise Proceedings of Inferior Court, Even Where Those Proceedings are Declared Final by Statute** — 1st R. S. c. 89, s. 9.]—An enactment that proceedings of an inferior Court shall be final, does not take away the jurisdiction of the Supreme Court to review their proceedings under a writ of certiorari. Burnaby et al., v. Gardiner et al., James 306. **1st R. S., c. 89, s. 9.**]—" If any overseers on behalf of the township, or any other person shall feel aggrieved by any proceedings under this chapter, such overseers or person may appeal to the next Sessions to be held for the County where the township is or the person shall reside, and the sessions shall hear and determine the same, and their order shall be final."

28. **Order Nisi** — Stating Grounds — Adding Other Grounds.] — Notwithstanding a rule of the court that the grounds must be set forth in the order nisi; the court has power to allow other grounds to be added. Ex parte Sprague, 8 C. C. C. 109, 36 N. B. R. 213.

29. **Payment of Costs as a Condition Precedent to Discharge from Gaol** — Ultra Vires.]—2. On a conviction for vagrancy it is ultra vires of a justice or recorder to condemn the accused to a fine and costs, and order imprisonment in case of default, adding that as a condition precedent to discharge from gaol that ascused should pay the costs and charges of conveyance to gaol. Loenard v. Pelletier, 9 C. C. C. 19, 6 Q. P. R. 54, Q. R., 24 S. C. 331.

30. **Removal of Conviction, Notwithstanding Statute** — Jurisdiction.]—Notwithstanding the amendment to s. 7 of the Ontario Summary Convictions Act by s. 14 of 2 Edw. VII., c. 12, taking away the right to certiorari, a conviction made by a magistrate without jurisdiction may be removed by certiorari ; and where the offence for which a conviction is made is found not to come within the statute defining the offence, or the municipal by-law defining the offence is not within the statute which gives the power to pass a by-law, there is such absence of jurisdiction as warrants the issue of a certiorari. Rex v. St. Pierre, 22 Occ. N. 33, 4 O. L. R. 76, 1 O. W. R. 365, 5 C. C. C. 365.

31. **Reviewing Evidence.**]—If the court below had jurisdiction its conclusion as to matters of fact cannot be reviewed by certiorari. Regina v. McDonald, 19 N. S. R. 336, overruled.

32. **Review of Findings of Fact by Magistrate.**]—If there was evidence from which the magistrate might draw the conclusion he did, it is not open to the court on certiorari proceedings to review the findings of fact. Ex parte Coulson, 1 C. C. C. 31, 33 N. B. R. 428.

33. **Review Questions of Law, Not of Fact** — Halifax City Charter—Acts 1864, c. 81, s. 140.]—Where convictions by the Stipendiary Magistrate of the City of Halifax, under section 140 of the City Charter, are brought up by certiorari, the court can review any matter of law, but cannot interfere with his decisionin respect to the facts. Queen v. Levy et al., 3 R. & C., 51.

34. **Rule Nisi or Rule Absolute in First Instance** — DISCRETIONARY WITH COURT.] —It is discretionary with the court, on an application for a writ of certiorari, either to grant the writ in the first instance or merely a rule nisi therefor. IN RE T. J. WALLACE, 1 Old., N. S. R. 525.

35. **Rule Nisi to Quash Writ Made by a Judge Returnable Before the Court on Circuit** — NO POWER TO GRANT SUCH RULE.]—A Judge at Chambers has no power to make a rule nisi to quash a writ of certiorari returnable before the court on circuit. ELLIOTT v. MCDONALD, 3 R. & G., N. S. R. 283.

36. **Second Writ** — AFTER PROCEDENDE COMMISSIONER.]—A writ of certiorari to remove a conviction by a stipendiary magistrate was quashed because of a defect in the bail bond and a writ of procedendo issued. Thereafter the commissioner allowed a second writ, to bring up the conviction a second time :—Held, that the commissioner had no authority to do anything which would destroy the effect of procedendo. Order nisi setting aside the second writ of certiorari was made absolute with costs. REGINA v. NICHOLS, 21 N. S. R. 288.

37. **Single Judge in Territories** — MOTION TO QUASH WITHOUT CERTIORARI.] —A Single Judge in the North-West Territories has jurisdiction to hear an application to quash a conviction where no writ of certiorari has been issued, if the conviction has been returned pursuant to statute. R. v. AMES, 1 C. C. C. 52, 5 Terr. L. R. 492.

38. **Statute Taking Away Right** — IMPROPER CONDUCT.]—Though the statute R. S. C. c. 43, sec. 108 (Indian Act) purports to take away the right to certiorari, yet it lies where there has been improper conduct on the part of the magistrate and a fair trial not secured. RE SING KEE, 5 C. C. C. 86, 8 B. C. R. 2 .

39. **Statute** — APPEAL TO COUNTY COURT — RIGHT TO CERTIORARI — EXCESS OF JURISDICTION.]—The Liquor License Act (New Brunswick) provides for an appeal to the County Court, and that no conviction confirmed or amended on appeal shall be removed by certiorari into any of the Courts of Record. It was held that if the magistrate exceeded his jurisdiction, it was discretionary with the Court whether a certiorari would lie, the statute being no bar. EX PARTE NUGENT, 1 C. C. C. 126, 33 N. B. R. 22.

40. **Statute Restricting Writ** — PER THOMPSON, J.]—Although the Justice's decision is made by the Statute final, we could, on certiorari say that he had assumed a jurisdiction which he could not exercise. HAWES v. HART, 6 R. & G., N. S. R. 45 ; 6 C. L. T., 140.

41. **Summary Convictions.**]—The power given to a Judge by the Rev. Stat. c. 161, s. 32, to hear appeals from summary convictions before justices of the peace, does not take away the right of the Supreme Court to grant a certiorari to remove such convictions. EX PARTE MONTGOMERY, 3 All. 149, N. B. R. **Quaere.**]—Whether such mode of appeal is applicable to offences not created by the Rev. Stat. Also, whether, in deciding a case on appeal the Judge is to be governed by strict legal principles or by the equitable principles on which reviews of civil cases are determined.

42. **Summary Conviction** — MERITS OF, NOT REVIEWABLE WHERE SUBJECT MATTER INTRA VIRES OF JUSTICE.]—An adjudication by a tribunal having jurisdiction over the subject matter is, if no defects appear on the face of it, to be taken as conclusive of the facts stated therein, and the Superior Court will not on certiorari quash the conviction on the ground that any such fact, however essential, has been erroneously found. There is, however, a marked distinction between the merits of the case, and points collateral to the merits upon which the limit of jurisdiction depends. R. v. BEAGAN, 6 C. C. C. 55, 36 N. S. R. 206.

43. **Summary Conviction** — MAGISTRATE'S JURISDICTION.]—Under the N. B. Liquor License Act, 1896, a conviction against a person selling without a license is made final and conclusive, and certiorari is, in effect, taken away, the sole question to be considered being the jurisdiction of the magistrate to convict. EX PARTE HEBERT, 4 C. C. C. 155, 34 N. B. R. 455.

44. **Summary Trial of Indictable Offences** — SUPERIOR COURT (QUE.)]— There is no jurisdiction in the Superior

Court [Que.] to hear certiorari applications as to convictions made under the summary trials of indictable offences clauses of the Code; such jurisdiction belongs to the Court of King's Bench. REX v. MARQUIS, 8 C. C. C. 346.

45. **Territorial Jurisdiction of Justice not Disclosed in Conviction** — CURATIVE EFFECT OF CODE SEC. 889.]—1. Where the conviction does not show on its face that the offence for which the defendant was convicted was committed within the Territorial jurisdiction of the justice, it may be sustained, if the papers returned with the certiorari, disclose such territorial jurisdiction, as would bring it within the curative provisions of sec. 889 of the Code. Here the warrant on which accused was apprehended disclosed the Territorial jurisdiction of the justice as well as the caption of the depositions. 2. A mere expression of opinion by the justice to the effect that in view of the evidence adduced by the prosecution, a denial on oath by the defendant would not alter his opinion as to her guilt, does not amount to a denial of the defendant under sec. 850 to make full answer and defence. R. v. MACGREGOR, 2 C. C. C. 410, 26 O. R. 115.

46. **Want of Jurisdiction** — APPROPRIATE REMEDY — STATUTORY ENACTMENT.]—Nothing but the express provision of a statute can take away the writ of certiorari; even this will not deprive the Superior Court of its power to issue the writ to quash a proceeding on the ground of want of jurisdiction. In such a case, certiorari is the proper remedy, and an appeal is not. In a case in which there has been inadequate service, certiorari is the appropriate remedy, because by appeal the defendant must waive the defect by appearing in the case to assert an appeal. RE RUGGLES, 5 C. C. C. 163, 35 N. S. R. 57.

IV. PRELIMINARY OBJECTIONS.

1. **Imperial Act, 13 Geo. II., c. 18, Not in Force in This Province** — OBJECTION TO CERTIORARI ON GROUND OF LATENESS — MUST BE TAKEN BY SUBSTANTIVE MOTION.]—The ground having been taken on the part of the prosecution that the writ of certiorari on which the motion to quash the conviction was based, had not been sued out within six months after the date of the conviction, as required by the English Statute, 13 Geo. II., c. 18.:—Held, that the statute is not in force in this Province, not being obviously applicable and necessary to our condition, and the Legislature of this Province, in legislating upon the subject of certiorari-having adopted the provisions of many English Statutes, relating to certiorari, while omitting to re-enact the provisions of the Act in question. When the local Legislature has legislated upon any particular subject, relative to which an English statute had previously existed, the Provincial and not the English statute must govern here. Also, that the objection, if available, must be taken by a substantive motion to set aside the writ, and not in opposition to a motion to quash the conviction. QUEEN v. PORTER, 2 N. S. R. (8 R. & G.), 352 9 C. L. T. 57.

2. **Instituting Affidavits, Before Return** — EFFECT OF THIS AND OTHER ACTS — WRIT SUED OUT FOR PURPOSE OF DELAY.]—After the Court, with full knowledge that a writ of certiorari had not been returned, received affidavits on the part of plaintiff intituled in the cause and granted a rule nisi thereon, and defendant appeared by counsel and resisted the rule upon an affidavit of defendant also intituled in the cause. Held, that it was too late to raise the objection that the cause was not properly before the Court and that the Court had no power to adjudicate thereon. Per Des Barres, J., (who delivered the judgment of the Court), when I find that the writ remained in the hands of the magistrates, to whom it was directed, for a whole year, without any effort being made on the part of the defendant to have it returned, and that when sent to the office of the Prothonotary to be filed without any return upon it, no application was ever made to the Court to enforce obedience to it, I think there is greater reason to presume that in suing out the writ of certiorari, the object of the defendant was delay. RAND v. FLAVIN, 2 N. S. D. 80.

3. **Irregularity.**]—In shewing cause to a rule nisi to quash a conviction, objection may be taken to the regularity of certiorari, and a separate application to supersede it need not be made. REGINA v. MCALLAN, 45 U. C. R. 402.

4. **Motion for** — PRELIMINARY OBJECTION — DISMISSED — SECOND APPLICATION.]—Where an application for a writ of certiorari has been dismissed, the Court will not entertain another application for the same purpose, although the first was dismissed on a preliminary objection. REX v. GEISER, 9 B. C. R. 503.

5. **Objections to Writ on Ground of Lateness** — MUST BE TAKEN BY SUBSTANTIVE MOTION.] — Objection that a writ of certiorari was too late, should be taken on a substantive motion to quash the writ. In re Bishop Dyke, 20 N. S. R. (8 R. & G.), 263, 8 C. L. T. 446. QUEEN v. PORTER, 20 N. S. R. (8 R. & G.), 352; 9 C. L. T. 57.

6. **Second Application.**]—Where an application for a certiorari has been refused even on a preliminary objection, the Court will not hear a second application for the same writ. REX v. GEISER, 7 C. C. C. 172; 8 B. C. R. 169, 213; 9 B. C. R. 503.

V. PRACTICE AND PROCEDURE.

1. DELAY IN APPLICATION.
2. NATURE AND GROUNDS OF APPLICATION.
3. NOTICE OF APPLICATION.
4. RECOGNIZANCE OR SECURITY.
5. TIME.
6. MISCELLANEOUS CASES.

1. DELAY IN APPLICATION.

1. **County Court Issuing Writ of** — NOTICE OF APPLICATION FOR WRIT — 13 GEO. II., c. 18, s. 5.]—A writ of certiorari to remove a prosecution for selling liquor contrary to the provisions of the Provincial License Act, 4th R. S., c. 75, from the magistrate's court into the county court, was quashed by a Judge of the latter court on the grounds, 1st, that the parties applying for the writ did not give the six days' notice of their intention to the Justices required by 13 Geo. II., c. 18, s. 5 ; and, 2nd, because they did not swear that they did not sell liquor contrary to law. An appeal from the decision of the county court Judge was dismissed with costs. MCDONALD v. ROMAN, 7 R. & G. 25, 7 C. L. T. 52.

2. **Delay in Applying.**]—An assessment of damages in respect to land taken by a railway was made in October, 1885, the owners of the land knowing of the proceedings, and notice of the assessment was served on them in May, 1886 :—Held, that an application for a certiorari to remove the assessment made on the second common motion day of Michaelmas Term, 1886, was too late, no satisfactory reason for the delay having been given. EX PARTE SWIM, 28 N. B. R. 138.

3. **Delay in Applying for** — ENTRY BY CLERK OF — NOTICE TO APPEAL — SERVICE — INSUFFICIENCY OF PROOF OF.]—Defendant was summoned to appear before the Sessions of Queen's County, in January, 1872, to answer a complaint for selling liquor without license. The affidavit of service of the summons was sworn before a commissioner. Defendant did not appear, and the hearing was postponed from one session to another until January, 1874, the defendant at no time appearing, when he was convicted of the offence. In the copy of proceedings returned by the clerk, an entry was made that "notice to appear was served on defendant":—Held, on application for a certiorari, that this was not sufficient, but that the clerk should have entered how the service was proved, and when and how it was made. Also, that a commissioner had no power to take the affidavit, which should have been made in open court. Where a conviction was made on the 20th January, and the copy of proceedings delivered to defendant on February 3rd, but only reached his counsel on February 10th, and was forwarded to Fredericton for the purpose of moving for a rule nisi in Hilary Term, but was accidently mislaid ; the court held that under the peculiar circumstances of the case, a rule nisi was properly granted though defendant did not apply until after Easter Term. REGINA v. GOLDING, 2 Pug. N. B. R. 385.

4. **Improper Entry** — DELAY.]—Where a rule nisi for a certiorari was granted in Easter Term, and the rule improperly entered on the plea side of the court, in consequence of which it was discharged in Trinity Term ; it is too late to renew the application in Michaelmas Term ; and Quaere : Whether it would have been granted in Trinity Term. ROBINS v. WATTS, 6 All. N. B. R. 573.

5. **Motion to Quash for Delay** — NECESSITY FOR NOTICE TO PROCEED.]—Rule 188 of the Crown Rules (Nova Scotia) directs that in all causes in which there have been no proceedings from one year from the last proceedings had, the party, whether prosecutor or defendant, who desires to proceed, shall give one calendar month's notice to the other party of his intention to proceed. The defendant, pursuant to the order of a Judge, removed a conviction made by a magistrate into the court, and took no further steps in the matter. The informant moved to quash the certiorari on the ground that no steps had been taken by the defendant for upwards of a year :—Held, that the informant must first give one month's notice of intention to proceed. REX v. MCDONALD, 23 Occ. N. 17.

6. **Motion to Quash for Delay** — PRACTICE — COSTS.]—To an application by the prosecutor to quash a certiorari removing a conviction for delay in proceeding ing it is not an answer that the defendant had given notice of motion to quash the conviction before the launching of the motion to quash the writ, as long as the delay is unexplained. Costs were given against the defendant. REX v. MCDONALD, 23 Occ. N. 95.

7. **Moving to Quash Writ** — COSTS — Rule absolute granted to quash a certiorari, but without costs, six years having elapsed before motion made. THE CITY OF HALIFAX v. HARTLAND, 2 R. & G., N. S. R. 116.

8. **Must Be Applied for Within Six Months from Conviction** — IMPERIAL ACT, 13 GEO. II., c. 18, SEC. 5 — COSTS PROCEDENDO.]—Defendant was convicted before the stipendiary magistrate for Cornwallis Police District of a violation of the Canada Temperance Act, 1878, and the conviction having been brought up by certiorari the court was moved to set the conviction aside on the ground that the Act was not in force when it was made. The order for the certiorari was not moved for until after the lapse of twenty-two months from the date of the conviction :—Held, that in making the conviction the stipendiary magistrate was exercising the functions of a justice of the peace, and consequently that the Imperial Act, 13 Geo. II., c. 18, sec. 5, limiting the granting of the writ of certiorari to six months after the date of the conviction, applied. The motion was refused with costs, and a procedendo ordered. Rigby J., dissenting. QUEEN v. MCFADDEN, 6 R. & G. 426, 6 C. L. T. 538.

9. **No Steps Within a Year.**]—Rule absolute in the first instance to quash a certiorari on the ground that no steps had been taken within a year. QUEEN v. RINES, 5 R. & G., N. S. R. 87.

10. **Prosecution** — DILIGENCE — EXTENSION OF TIME.]—There must be continuous diligence throughout the stages of applying for a writ of certiorari, causing it to issue, and proceeding to judgment upon it ; and where the delay fixed for the return of the writ is allowed to lapse without any step being taken to obtain a new order, the petitioner cannot afterwards obtain an extension of the delay ; and especially where more than two years have elapsed since the expiration of the delay, and the reason for not complying with the original order is not shewn. JOANETTE v. WEIR, Q. R. 26, S. C. 288.

11. **Removal of Proceedings Under the Highway Act** — UNREASONABLE DELAY IN APPLYING FOR.]—A certiorari to remove proceedings for the alteration of a road under the Highway Act, Consol. Stat. c. 68, was refused where two terms had elapsed since the filing of the commissioner's return. EX PARTE LILSETT, 25 N. B. R. 66.

12. **Rule Absolute in the First Instance to Set Aside Writ, no Steps Having Been Taken for a Year.**]—Where a motion is made to quash a certiorari, on the ground that no step has been taken within a year, the rule will be absolute in the first instance. THE CITY OF HALIFAX v. VIBERT, 3 R. & C. 54 ; THE CITY OF HALIFAX v. PORTER, IB.

13. **Time of Applying for** — DELAY UNACCOUNTED FOR — WHERE JUSTICE HAD NO JURISDICTION.]—A certiorari was granted to remove a conviction, though two terms had since elapsed, and the delay was unaccountad for, it being clear the justice had no jurisdiction. EX PARTE LONG, 27 N. B. R. 495.

2. NATURE AND GROUNDS OF APPLICATION.

1. **County Court Clerk.**]—A writ of certiorari to bring up papers from the county court should be directed to the Clerk of the Court, either by name, adding the name of his office, or by the name of his office alone. It is no objection to a return to a writ of certiorari that more papers than directed are returned. LUNN v. WINNIPEG, 2 Man. L. R. 225.

2. **County Judge or Magistrate** — NOTICES TO JUSTICES — AMENDMENT OF — REQUISITES OF — FILING OF APPLICATION — PENDENCY OF APPEAL.] — S., having been convicted before magistrates, took proceedings to appeal to the County Judge, and procured the papers to be sent to his clerk. Afterwards, and before any proceedings by the Judge, he had the papers returned to the convicting Justices. Upon notice to the Justices of an application for 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 Judge, he bing 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., c. 18, s. 5, entitles the convicting Justices only to the six days' notice, 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 the 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 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 the notice on the magistrates. The notice must show who the party moving is. The practice of arguing the validity of the conviction upon the application for the certiorari does not apply, except when the parties consent. The pendency of an appeal to the county court does not interfere with certiorari ; unless, at all events, the question of jurisdiction is not raised upon the appeal. REGINA v. STARKEY, 6 Man. L. R. 588.

3. **Failure to Specify Grounds in Rule.**]—No objection on account of any omisison or mistakes in the order of judgment will be allowed unless such omission or mistake has been specified in the rule for issuing the certiorari. REGINA v. BEALE, I. C. C. C. 235, 11 Man. L. R. 448.

4. **Full Court** — CRIMINAL MATTER — PRACTICE.]—Motion to the full court upon notice to a justice of the peace for a writ of certiorari to remove a conviction of the applicant under the Master and Servant's Act, R. S. M. c. 96, for the non-payment of $18.00 wages :—Held, that the motion should be adjourned into Chambers to be heard by a single Judge if the parties consented, otherwise that it should be dismissed without prejudice to a motion in Chambers. RE DUPAS, 12 Man. L. R. 653.

5. **Nature and Grounds** — GROUNDS OF APPLICATION.]—The grounds upon which the application is made ought to be stated in the summons. REGINA v. BEALE, 11 Man. L. R. 448.

6. **Nature and Grounds** — OBJECTION NOT TAKEN BEFORE LOWER TRIBUNAL.] —See Per Bain J. REGINA v. STARKEY, 7 Man. L. R. 489.

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3. NOTICE OF APPLICATION.

1. **Conviction in Court.**]—Held, that a conviction once regularly brought into, and put upon the files of the court, is there for all purposes, and a defendant may move to quash it, however or at whosesoever instance it may have been brought there. Where, therefore, on an application for a habeas corpus, under R. S. O. 1877, c. 70, a certiorari had issued, and in obedience to it the conviction had been returned, the conviction was quashed on motion, though there had been no notice to the magistrate, or recognizance. Regina v. Levecque, 30 U. C. R. 396, distinguished. REGINA v. WEHLAN, 45 U. C. R. 396.

2. **Discharge Asked For.**] — Quaere, whether the certiorari in this case was properly issued without the notice, etc. required by 13 Geo. II., c. 18, though the object was to obtain the prisoner's discharge, not to quash the conviction. REGINA v. MUNROE, 24 U. C. R. 44.

3. **Form of Notice of Application For.**]—Notice of application for a writ of certiorari in Nova Scotia entitled "In the Supreme Court, Crown Side," and addressed to the magistrate at the end instead of at the beginning of the notice, was held to be sufficient. REX v. BURKE, 7 C. C. C. 538.

4. **Grounds of Objection.**]—Semble, that in a notice under 13 Geo. II., c. 18, of application to remove a conviction the grounds of objection to such conviction need not be stated. In RE TAYLOR v. DAVY, 1 P. R. 346.

5. **Magistrate.**]—Notice of application for a certiorari must be given to the convicting magistrate, and the want of it is good cause against a rule nisi to quash the conviction. REGINA v. PETERMAN, 23 U. C. R. 516.

6. **Private Prosecutor.**]—The affidavit of service of a 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, 42 U. C. R. 206.

7. **Prosecutor's Application.**] — Where the application for a certiorari is made by the prosecutor, no notice to the justice is necessary. REGINA v. MURRAY, 27 U. C. R. 134.

8. **Second Application.**] — Where, on 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, 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 irregularly obtained for want of notice to the convicting justices. REGINA v. MCALLAN, 45 U. C. R. 402.

9. **Sessions.**]—Notice of an application for a certiorari to remove a conviction confirmed by quarter sessions, must be given to the chairman and his associates, or any two of them, by whom the order affirming such conviction was made ; and where a certiorari had been obtained without such notice, and a rule nisi obtained to quash such conviction and order, the certiorari was set aside. REGINA v. ELLIS, 25 U. C. R. 324.

10. **Sessions.**]—Held, that under the circumstances of this case, no notice to the chairman of the sessions of the defendant's intention to move for a certiorari was necessary. REGINA v. CASWELL, 33 U. C. R. 330.

11. **Time — WAIVER.**]—A preliminary objection 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.

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4. RECOGNISANCE OR SECURITY.

1. **Affidavit of Justification by Sureties—**CODE SEC. 892.]—Code sec. 892 as to the power of a court having jurisdiction to quash any conviction, to require the defendant to enter into a recognizance, embodies the similar provisions as laid down in the Canadian Summary Convictions Act. Hence any rule of court passed under the authority of the old Act remains in force without the necessity of re-enacting a new rule under sec. 892 of the Code. An affidavit [in Ontario] of justification by sureties must show that they are worth $100 over and above any liabilities incurred as sureties as well as ordinary debts. R. v. ROBINET, 2 C. C. C. 382, 16 Ont. P. R. 49.

2. **Bond Before Appeal**—CERTIORARI NOT TAKEN AWAY BY ACT OF ASSEMBLY.]—The Act 18 Vict. c. 36, to prevent the traffic in intoxicating liquors, authorized a justice of the peace to impose fines and to order liquors to be destroyed in certain cases; and the 17th section declared that no order of the supreme court, or any other court for review or removal, or other appeal from the judgment of the justices, should be allowed, unless the appellant should give notice to the justice of his intention to appeal, and within ten days after the conviction execute a bond with sureties to prosecute the app al with effect, and to pay the fine and costs imposed upon him, in case the conviction was affirmed. Held, that the certiorari not being taken away by the Act, it was not necessary to give a bond to prosecute as a preliminary proceeding to applying for a certiorari to remove a conviction under the Act. EX PARTE CLIFF, Mich. T., 1856.

3. **Bond Instead of Bail-piece Filed**—WRIT QUASHED—RE-ARREST OF DEFENDANT AFTER WRIT QUASHED.]—Certiorari to remove a conviction for violation of the License Laws in the City of Halifax quashed on the ground that a bond had been filed instead of bail. The defendant having been released on the issue of the certiorari, and re-arrested on the original warrant after the certiorari was quashed, the court granted a rule under the Statute "Of securing the Liberty of the Subject," on terms that defendant should bring no action. THE CITY OF HALIFAX v. LEAKE, 2 R. & G., N. S. R. 142.

4. **Bond on Appeal or on Issuing Writ of Certiorari** — ACTION ON — INDORSING NAME OF RELATOR ON WRIT IN ACTION—4th R. S. c. 75, ss. 25, 26 and 39.]—In an action on a bond to the Queen under 4th R. S. c. 75, s. 25, an attorney was named on the writ, but it was not shown at whose instance or for whose advantage the action was brought. The court passed an order staying the action until plaintiff's attorney should indorse on the writ the name of the Clerk of the License or the other person at whose instance the action was brought, to respond the judgment. QUEEN v. MCKARCHER, 3 R. & G., N. S.R. 337.

Proceedings similarly stayed in Queen v. Carter, but the correctness of the order staying questioned. QUEEN v. CARTER, 1 R. & G., N. S. R. 307.

5. **Bond on Certiorari** — INDORSING NAME OF RELATOR — 4th R. S. c. 75, ss. 25, 26 and 39.]—In an action on a certiorari bond, under 4th R. S. c. 75, "Of Licenses," the defendant obtained an order nisi for the indorsation on the writ of the name of a person to be liable for costs, under the practice established by Queen v. McKarcher, 3 R. & G. 337. Before the rule was made absolute the plaintiff indorsed the name of the Clerk of License and gave the defendant notice. A rule was afterwards obtained making the rule nisi absolute and giving the defendant ten days to plead. Plaintiff after the rule was made absolute, indorsed the name of the Clerk of License a second time, but did not give the defendant notice of the second indorsation, and after the expiration of ten days, marked a default for want of a plea :—Held, that the default had been regularly marked. Quaere, as to the practice established by Queen v. McKarcher, 3 R. & G. N. S. R. 337. QUEEN v. CARTER, 1 R. & G., N.S.R. 307.

6. **Bond on Issuing Writ of Certiorari**—4 R. S. c. 75—CONDITION—PROOF OF BREACHES.]—During the pendency of a certiorari to remove a conviction of the defendant for selling intoxicating liquors contrary to law, defendant was again convicted and fined $22.80, inclusive of costs, which was reduced below $20 by a part payment, and action was brought in the county court for the balance on a bond conditioned that the defendant would not sell during the pendency of the appeal from the first conviction. There was no evidence that he had sold liquor personally, but it appeared that liquor had been sold on the premises by a woman who was not shown to be defendant's wife, child or servant :—Held, that the breach of the condition of the bond had not been proved. Quaere, whether even a sale proved to have been made by a wife, child or servant would be a breach of the condition. QUEEN v. MCKENZIE, 1 R. & G., N. S. R. 488.

7. **Deposit of Cash Without Written Condition**—LIQUOR LICENSE ORDINANCE—KEEPING BAR OPEN DURING PROHIBITED HOURS—WANT OF ALLEGATION AND PROOF OF ACCUSED BEING A LICENSEE.]—A deposit by the accused with the proper officer of $100 cash, though unaccompanied by any written document-is a sufficient compliance with the re-

quirements of Rule 13 of the Consolidated Rules of Court, 1895. After a writ of certiorari has been issued preliminary objections thereto should be raised promptly and by means of a substantive motion to quash the writ. Upon a charge of having had a bar-room open and sold liquor during prohibited hours the prosecution must either allege or prove that the defendant was a licensee. THE QUEEN v. DAVIDSON, 4 Terr. L. R. 425, 21 Occ. N. 98.

8. **Form.**] — Where the affidavit accompanying a recognizance filed on a motion for a rule nisi to quash a conviction did not negative the fact of the sureties being sureties in any other matter, and omitted to state that they were worth $100 over and above any amount for which they might be liable as sureties, it was held insufficient. The rule in force as to recognizances prior to the passing of the Criminal Code is still in force. REGINA v. ROBINET, 16 P. R. 49.

9. **Necessity for**—APPEAL PENDING NOT A BAR TO CERTIORARI.]—A writ of certiorari was granted and on the return it appeared that the magistrate had filed all the papers in the proceedings in court as provided by sec. 801 of the Code. The accused had also entered into a recognizance to prosecute an appeal. The sureties swore that they were possessed of property of the value of $200 " over and above all just debts and liabilities, and over all exemptions allowed by law." :—Held, 1. That the affidavit of justification was sufficient, R. v. Robinet, 16 Ont. P. R. 49 not followed. 2. That the fact of the appeal pending did not take away the right of certiorari; since a party has always a right to certiorari on the ground of want of jurisdiction, whether an appeal is pending or not. 3. A recognizance is not necessary before a writ of certiorari is obtained; and if the writ of certiorari is not necessary or is dispensed with (owing to the fact of the magistrate having filed the papers in the Court of Superior Jurisdiction as provided under Code sec. 801) there is no necessity to file a recognizance. R. v. ASHCROFT, 2 C. C. C. 387, 4 Terr. L. R. 119.

10. **Preliminary Deposit under Quebec License Law**—RETURN OF.]—According to the License Act of P. Q. sec. 217 (63 Vict. cap. 12) a certiorari will not be issued save upon a deposit of the full amount of the fine and costs plus $50 security; the application for certiorari does not take away from the defendant the option to serve out the term of imprisonment instead of paying the fine and costs; and the defendant having offered to serve out the term was held entitled to recover the deposit. WING v. SICOTTE, 10 C. C. C. 171.

11. **Proceedings Brought up by Certiorari to have Recognizances Estreated.**]—Defendant, having been convicted in the police court of an assault, entered into a recognizance with two sureties to keep the peace. Afterwards he was convicted of a second assault, and the Attorney General had the proceedings brought up by certiorari, whereupon, the court, holding that the mode of proceeding in England to estreat recognizances was wholly inapplicable to this Province, sanctioned the course pursued in Queen v. Thompson, 2 Thom. 9. QUEEN v. BROWN, 1 R. & G., N. S. R. 51.

12. **Quashing Certiorari.**]—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, 46 U. C. R. 565.

13. **Recognizance**—IRREGULARITY.]—In shewing cause to the rule nisi to quash the conviction, it was objected that the recognizance was irregular, being dated before the conviction, but held, that this ground was only for a motion to quash the certiorari, or the allowance of it. REGINA v. HOGGARD, 30 U. C. R. 152.

14. **Recognizance.**]—Held, that on the return of a writ of certiorari, a recognizance is unnecessary. REGINA v. NUNN, 10 P. R. 395.

15. **Recognizance.**]—Held, that since the passing of the Dominion Statute 49 Vict. c. 49, s. 8, there is no longer necessity for a defendant, on removal

by certiorari of a conviction against him, to enter into the recognizance as to costs formerly required :—Held, also, that the words "shall no longer apply" in s. 8 mean that from the day of the passing of the statute the Imperial Act 5 Geo. II. c. 19, shall no longer apply, not that the Imperial Act shall cease to have application in Canada upon a general order being passed under s. 6 of the Dominion Act. REGINA V. SWALWELL, 12 O. R. 391.

16. **Sufficiency of Sureties**—PROOF OF DISCHARGING RULE NISI—LEAVE FOR NEW RULE.]—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 $300.00 with one or more sufficient sureties, or to have made a deposit of $200.00. 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 $200.00 having been deposited a day or two before the return day of the rule nisi, with the view of complying with the rule of 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, 1 Terr. L. R. 191.

17. **Sufficiency of Justification by Sureties**—APPEAL TAKING AWAY RIGHT TO CERTIORARI.]—An affidavit of justification upon a recognizance given pursuant to Rule of Court passed under section 892 of the Crimnial 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 of court made under section 892 of the Criminal Code requiring sufficient sureties for the specific amount is complied with if the sureties justify as being possessed of property of that value, and as being worth the amount over and above all their just debts and liabilities, and over and above all exemptions allowed by law. Regina v. Robinet, not followed. Where a conviction is attacked on the ground of want of jurisdiction, the mere filing of a recognizance by the defendant on an appeal therefore does not deprive him of his right to a writ of certiorari. The conviction and all other proceedings relating thereto having been filed by the magistrate under section 80 of the Criminal Code, in the office of the clerk of the court for the judicial district in which the motion is made, a motion to quash the conviction can be made without the issue of a writ of certiorari. Section 892 of the Criminal Code authorizes the requiring of a recognizance only where the conviction is brought before the court by a writ of certiorari, and no recognizance is required where such a writ is not necessary or is dispensed with. THE QUEEN V. ASHCROFT, 4 Terr. L. R. 119.

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5. TIME.

1. An application for a certiorari to remove an assessment should be made promptly. Where a party had notice of an assessment in December, and his property was sold under execution for non-payment early in February, an application made in Easter term for a certiorari to remove the proceedings was refused, though the assessment appeared to have been improperly made. EX PARTE GEROW, 4 All., N. B. R., 269.

2. An application for a certiorari should be made at the first term after the conviction; but where the justice had no jurisdiction in the matter, a certiorari was granted, though a term had elapsed. EX PARTE MULHERN, 4 All., N.B.R., 259.

3. An application for a certiorari to remove proceedings under the Highway Act 13 Vict. c. 4, though no time is limited by law, should be made without unreasonable delay. A delay of one term held not unreasonable. EX PARTE HEBERT, 3 All., N. B. R., 108.

4. **Mistake in Time.**]—Owing to a mistake in the Crown office, a rule to return the certiorari, and afterwards a rule for an attachment issued, although a return had in fact been filed. More than six months having thus expired since the conviction, the court were asked to allow process to issue against the justice for

the illegal conviction as of a previous term, but the application was refused. Quaere, whether the six months could be held to run only from the time of quashing the conviction. IN RE JOICE AND ANGLIN, 19 U. C. R. 197.

5. **Notice**—CERTIORARI QUASHED FOR WANT OF—NOTICE OF MOTION FOR APPEAL FROM COUNTY COURT—HOW HEADED—CERTIORARI TO REMOVE PROCEEDINGS FROM MAGISTRATE'S COURT TO COUNTY COURT QUASHED FOR WANT OF NOTICE—NOTICES OF MOTION FOR APPEAL FROM THE COUNTY COURT MUST BE HEADED IN THAT COURT.]—A writ of certiorari to remove a prosecution for selling liquor contrary to the provisions of the Provincial License Act, from the magistrate's court into the county court, was quashed by a Judge of the latter court, on the grounds, 1st, that the parties applying for the writ did not give the six days' notice of their intention to the justices required by 13 Geo. II. c. 18, s. 5; and 2nd, because they did not swear that they did not sell liquor contrary to law. An appeal from the decision of the county court Judge was dismissed with costs. MCDONALD V. RONAN, 7 R. & G., N. S. R. 25.

6. **Time for Issue** — EXTENSION.] — A party who has obtained an order for a writ of certiorari, must cause the same to be issued and returned within the delay fixed when his application was granted, and cannot, by motion, obtain leave to issue it afterwards. JOANNETTE V. BULLER, 6 Q. P. R. 146.

7. **Time of Application**—DELAY.]—1. The time for granting a certiorari to remove proceedings of trustees of schools under Parish School Act, 15, Vict. c. 40, is not limited by Act 13 Vict. c. 30, s. 2. EX PARTE JOCELYN, 2 All. N. B. R. 637.

8. When an order of affiliation was made in January, 1865, but the defendant did not enter into recognizance to support the child, and in January, 1866, the Sessions adjudged him to be imprisoned for not obeying the order :—Held, too late to apply for a certiorari to remove the proceedings for an alleged defect in the order of affiliation. EX PARTE KENNEDY, 6 All. N. B. R. 335.

9. **When in Time.**]—Where an assessment was ordered on the 20th October, and a rule nisi for a certiorari obtained at chambers on 27th Feburary, returnable in Easter, the court held the application to be in time. REGINA V. THE ASSESSORS OF RATES, KINGS, 1 HAN. N. B. R. 528.

10. Where an appeal from a summary conviction is made to a Judge of the court under the 1 Rev. Stat. c. 161 s. 32, and refused by him, a subsequent application to this court for a certiorari should in general be made at the first term afterwards. The court refused to interfere in such a case after the lapse of one term, where the conviction appeared to be sufficient on the merits. EX PARTE O'REGAN 3 All. N. B. R. 261.

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6. MISCELLANEOUS CASES.

1. **Affidavits**—WHEN MAY BE USED.]—After the return of a certiorari, affidavits may be used to show want of jurisdiction in the justice, when that fact does not appear on the return. REGINA V. SIMMONS, 1 Pug. N. B. R. 158.

2. **Appeal**—CHANGE OF FORMER PRACTICE.]—Since the adoption of the Crown rules providing for an appeal, the court will not entertain a motion except by way of appeal, to quash a writ of certiorari, unless for reasons arising after the making of the order therefor. Re Cameron's Circus (2 R. & G. 248), and Re Rice (20 N. S. R. 440), are thus superseded. REGINA V. SIMON FRASER, 22 N. S. R. 502.

3. **Application for**—WHETHER NECESSARY TO PRODUCE COPY OF PROCEEDINGS.]—Although it is not necessary on an application for a certiorari that a copy of the proceedings sought to be removed should be produced, the substance should be set out. EX PARTE NEVERS, 19 N. B. R. 5.

4. **Application to Judge at Chambers**—PRACTICE.]—On an application to a Judge at chambers for a certiorari, there should be a summons or a rule nisi in the first instance. EX PARTE HOWELL, 1 All. N. B. R. 584.

5. **Canada Temperance Act, 1878**—NO APPEAL FORM REFUSAL OF JUDGE TO GRANT CERTIORARI TO REMOVE CONVICTION UNDER THE ACT—PROCEEDINGS HELD TO BE OF A CRIMINAL NATURE.]—

Defendant having been convicted of selling intoxicating liquor contrary to the provisions of the Canada Temperance Act, 1878, application was made to a Judge of the Supreme Court at Chambers for a writ of certiorari to remove the proceedings into the Supreme Court. The application having been refused defendant appealed :—Held, that the matter was a criminal one, from which there was no appeal. The appeal having been dismissed on a preliminary objection of which no notice had been given, the order was made without costs. QUEEN v. CALHOUN ET AL., 20 N. S. R., (8 R. & G.) 395, 9 C. L. T. 62.

6. **Commissioner Granting.**]—Since the adoption of the Crown Rules, 1889, a writ of certiorari can no longer be granted by a commissioner of the Supreme Court. REGINA v. GRANT, 23 N. S. R. 416; REGINA v. CONRAD, 24 N. S. R. 58; REGINA v. KING, 24 N. S. R. 62.

7. **Contradictory Affidavits.**]—Where the affidavits in answer to an application for a certiorari to remove the proceedings in a prosecution under the Act 5 Wm. IV. c. 2, for non-performance of statute labour, stated that the party had been duly notified, the court made the rule absolute in order to ascertain what the notice was—the applicant in his affidavit having denied notice. EX PARTE FERGUSON, 1 All. N. B. R. 663.

8. **Crown Office Rules** — STATING GROUNDS.]—Under the practice in British Columbia, it is not necessary to state the grounds on which the motion is made in further detail than the form prescribed by the Crown Office Rules when this is adhered to. R. v. MCGREGOR, 10 C. C. C. 313.

9. **Copies of Proceedings**—RETURN.]—It is the duty of school trustees to keep a minute of their proceedings, and if the original orders have been filed with the clerk of the peace or assessors, copies may be returned with the certiorari. EX PARTE JOCELYN, 2 All. N. B R. 637.

10. **Copy of Proceedings**—PRODUCTION—NECESSITY OF.]—Quaere, Whether a party applying for a certiorari should not produce a copy of the proceedings before the justice, or account for his not doing so. EX PARTE ABELL, 18 N. B. R. 600.

11. **Crown Rules**—COMMISSIONER.]—On argument coming on after the coming into effect of the Crown Rules :—Held, that before the passing of those Rules a commissioner of the Supreme Court had express power to grant writs of certiorari, under Acts of 1874, c. 1, amending c. 89 R. S. 4th series, and the practice was regulated by ss. 57 and 58 of the "Practice Act." REGINA v. CONRAD, 24 N. S. R. 58; REGINA v. KING, 24 N. S. R. 62.

12. **Direction of Writ**—COSTS—NEW GLASGOW—NO POWER TO ESTABLISH COURT OF APPEAL AND REVISION—STOCK OF COMPANIES NOT DOING BUSINESS IN THE TOWN HELD BY PARTIES IN THE TOWN.]—The Act incorporating the Town of New Glasgow empowered the corporation to vote, assess, collect, receive, appropriate, and pay the monies required for poor rates and all other rates, and conferred upon the corporation all the powers theretofore vested in the Sessions, Grand Jury and Town Meetings, with power to make by-laws substituting assessment in lieu of statute labor, and to make all rules necessary for the creating and conduct of the police and municipal court of the town, and for regulating the mode of assessment and levying the same, and generally for all purposes connected with or affecting the internal management or government of the town :—Held, that the corporation could not, under these provisions establish a Court of Appeal and Revision, with reference to assessments, with power to administer oaths. Under a by-law of the Town of New Glasgow, providing that all real and personal property in the town should be liable to taxation :—Held, that insurance and bank stocks owned by residents of the town, in companies not doing business in the town, were not liable to assessment. Where the assessment roll was amended by the Court of Revision, a committee chosen from the council pursuant to a by-law, for the purpose of reviewing the assessment, and the action of the Court of Revision was confirmed by the council :—Held, that a writ of certiorari, addressed to the Court of Revision and the Town clerk, could be sustained, though otherwise if it had been addressed only to the

Court of Revision. Per Sir William Young, C. J., As some doubt rests upon the form, the rule nisi, to quash the assessment, &c., will be made absolute without costs. FRASER & BELL v. TOWN OF NEW GLASGOW, 1 R. & G., N. S. R. 250.

13. **Directions of Writ to Parties having no Judicial Duties to Perform**—SCHOOL TRUSTEE—COSTS.]—It is a fatal objection to a writ of certiorari that it is not addressed to parties having any judicial functions to perform, and a claim to exercise the office of school trustee cannot, therefore, be tested by this writ. Quashed with costs. IN RE ASSESSMENT OF JOHN CAMERON, 2 R. & G. N.S.R. 177.

14. **Harbour Commissioners** — PILOT'S CERTIFICATE.]—The procedure in the Province of Quebec to quash a conviction of the Montreal Harbour Commissioners cancelling a pilot's certificate is by certiorari to the Superior Court. ARCAND v. MONTREAL HARBOUR COMMISSIONERS, 4 C. C. C. 491.

15. **Intituling Papers.**]—On application for a certiorari to remove conviction of one J. B., for selling liquor without license :—Held, 1. That the rule nisi was properly intituled "In the matter of J. B.," and that it need not state into which court the conviction was to be removed, this being sufficiently shewn by the intituling it in the court in which the motion was made. IN RE BARRETT, 28 U C. R. 559.

16. **Judge in Vacation.**]—A Judge of Supreme Court may grant a rule nisi for a certiorari returnable in Term. EX PARTE MCNEILL, 3 All., N. B. R., 493.

17. **Mistake in Name of Applicant**—QUASHING ORDER IN NEW CERTIORARI.]—Where the Christian name of the applicant for a certiorari was misstated in the writ, it was quashed, and a new certiorari ordered to issue. REGINA v. WATTERS, 6 All., N. B. R., 409.

18. **Motions to Maintain and Quash Writ.**]—In a matter of certiorari an inscription alone is sufficient, and a motion made by the petitioner to maintain the certiorari, and another made by the respondent to quash the certiorari, will both be dismissed with costs as useless. LEVESQUE v. ASSELIN, 6 Q. P. R. 63.

19. **Motion to Quash Summary Conviction**—NECESSITY FOR WRIT OF CERTIORARI.]—On a motion to quash a summary conviction it was held, a writ of certiorari should have been issued, and a return made thereto. It is not sufficient that on a habeas corpus application the magistrate is directed to return the proceedings relating to the imprisonment. Also the mere fact that the proceedings are on the files of the court, does not give the court jurisdiction to quash them when they reach the files. It is the return to the writ made in due form which gives the necessary jurisdiction to quash the conviction. REX. v. MACDONALD, 5 C. C. C. 279.

20. **Necessity for Copy of Proceedings sought to be Removed.**]—Rule nisi for certiorari discharged on the ground that no copy of the original proceedings was exhibited with the affidavits upon which the rule was granted, and there being no evidence that such copy could not have been obtained nor as to what the proceedings were. EX PARTE EMMERSON, 1 C. C. C. 156, 33 N. B. R. 425.

21. **Non-Compliance**—CONVICTION NOT PRODUCED.]—Appeal from an order at chambers to remove a conviction. The affidavit on which the order was granted, set out that "the defendant was served with the paper writing or minute of conviction......being the minute or memorandum of the conviction or judgment made......" :—Held, allowing appeal, that Crown Rule 31 was not complied with, which requires production and proof of a copy of the conviction itself, in the absence of which there was no proof that a conviction had been made. REGINA v. WELLS, 28 N. S. R. 547.

22. **Nova Scotia Liquor License Act**—AFFIDAVIT.]—The affidavit denying the offence set out in the information required by sec. 117 of the Liquor License Act of Nova Scotia, 1895, is essential to the allowance of a certiorari in relation to a conviction under said Act. REGINA v. BIGELOW, 4 C. C. C. 337, 31 S. C. R. 128.

23. **Objections Open.**]—Held, that 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 justices as appeared from the memorandum of conviction which was signed by them. REGINA v. SMITH, 46 U. C. R. 442.

24. **Objections to be Stated.**]—A defendant applying for a certiorari to remove an indictment from the sessions must shew that it is probable the case will not be fairly or satisfactorily tried in the court below, and if difficulties on points of law form the ground of application, they must be specifically stated. IN RE KELLETT AND PORTER, 2 P. R. 102.

25. **Practice After Removal.**]—A certiorari issued on the 12th of April, 1872, on notice of defendant to a police magistrate, to return a conviction for selling liquor without a license. The writ was returned on the 21st of May, in Easter term, with conviction and recognizance, and both defendants appeared by taking out rules. The prosecutor then obtained a rule nisi to quash the certiorari, and for a procedendo to the police magistrate. But up to this time there had been no motion to quash the conviction :—Held, that the proper practice is, that an appearance to the certiorari should be filed in the Crown office, and the case set down on the paper, so that either party might move for a conviction. That the defendant was in default in not having moved to quash the conviction, or set down the case on the paper. Semble, that an affirmance of the conviction by the prosecutor is necessary to obtain the costs, and further, as this was not done, the court declined to estreat the recognizance. A procedendo was awarded, it being thought more advisable that the police magistrate should enforce the conviction than the court above. REGINA v. FLANNIGAN, 9 C. L. J. 237.

26. **Proof of By-law on Certiorari Proceedings.**]—Where the original by-law was not put in evidence before the convicting justice, it is not admissible to prove it by affidavit on the application for a writ of certiorari. REGINA v. BANKS 2 Terr. L. R. 81, 1 C. C. C. 370.

27. **Remission of Record to Inferior Court** — EXCEPTIONS.]—The general rule is that when a record of an inferior court is brought into a superior court by certiorari and filed, it cannot be sent back. But this rule is not inflexible. It will be sent back to the inferior court to be proceeded with there, after it has appeared that the defendant had not good cause for removing it, and also when it appears from the return that the court above could not administer the same justice to the parties as the court below, and there would be a failure of justice if the record were not sent back. REGINA v. ZICKRICK, 5 C. C. C. 380, 11 Man. L. R. 452.

26. **Renewal of Application.**]—When a rule for a certiorari is discharged because the affidavits are improperly entitled, the application may be renewed on amended affidavits. EX PARTE BUSTIN, 2 All., N. B. R., 211.

29. **Signature.**]—A writ of certiorari must be signed by the prothonotary. REGINA v. WARD, 21 N. S. R. 19.

30. **Special Provisions in Act.**]—A Judge in vacation has no authority to make an order to shew cause in Term why a certiorari should not issue to remove proceedings under the Act 13 Vict. c. 53. EX PARTE IRVINE, 2 All., N. B. R. 516.

31. **Summary Cause Brought up by Certiorari on Ground that Judge of County Court had Refused to Take Down Certain Evidence** — ORDER NISI TO SET ASIDE WRIT — ORDER FOR WRIT SHOULD ALSO BE ATTACKED.]—A motion was made to set aside a certiorari taken out in a summary cause tried in the county court, the ground for the certiorari being that the Judge had refused to take down certain evidence. The court refused to amend the minutes of the county court Judge, but as to the certiorari, held that it was safer and better that the rule to set it aside should include a motion to set aside the order for the certiorari as well as the certiorari itself. With the consent of the parties the rule to set aside the certiorari was discharged with costs. DOYLE v. GALLANT, 2 R. & G., N S. R. 86, 1 C. L. T., 567.

32. **Where Rule Once Refused**—SECOND APPLICATION — REFUSAL OF COURT TO HEAR A SECOND APPLICATION.]—A motion having been made for a certiorari and refused, the court declined to hear a second application. EX PARTE ABELL, 19 N. B. R. 2.

33. **Writ of**—How Allowed.]—Quaere, whether, under the practice the writ of certiorari should not have been allowed in the first instance without any rule nisi, Queen v. Ward, 20 N. S. R. (8 R. & G.), 108.

VI. RETURN TO.

1. **Allowing Return to Be Amended** — Ordering Further Certiorari.]—A ceritorari having issued to bring up the proceedings and order made in the case of an insolvent confined debtor, the justices stated in the return that the order was not in their possession, the return was allowed to be amended, by the justices stating the substance of the order, if in their power to do so, or if not, by stating how the original order went out of their possession, or what has become of it, or otherwise, that a further certiorari might issue. Regina v. Vail, 5 All. N. B. R. 165.

2. **Attachment Granted for Refusal to Obey Writ of** — Matter Treated as Already in Court, Although Writ Not Returned — Intituling Affidavits.]—A writ of certiorari having been issued out of the Supreme Court, to the Chief Commissioner of Mines, the Commissioner declined returning or obeying the writ, for reasons which the court held insufficient, and a rule nisi for an attachment was thereupon granted. The rule was opposed on two grounds, the second being that the affidavits upon which the rule was granted were intituled in the cause :—Held, Wilkins, J., dissenting, that although the writ of certiorari had not yet been returned, the matter was already in the court, and therefore the affidavits were rightfully intituled. In re Clyde Coal and Mining Company, 2 N. S. R. 56.

3. **Conclusive Effect of Return.**]—The defendant having been convicted for selling liquor without a license, the deposition returned to the court by the convicting magistrate under the certiorari shewed thet 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 not proved or given in evidence :—Held, that the return of the certiorari was conclusive, and that the court could not go behind it. Regina v. Strachan, 20 C. P. 182.

4. **Contradicting Return** — Use of Affidavits.]—The affidavits on which a certiorari was obtained cannot be referred to, for the purpose of contradicting the return. See Allen's Notes to the King v. Justices of York, C. Ms. 110.

5. **Conviction** — Midwifery — Return Without Certiorari — Code Sec. 888.]—1. It is the duty of a convicting justice to return, not only the record of a conviction, but also the depositions and all the proceedings to the proper officer of the High Court in that behalf, apart altogether from Code Sec. 888. 2. Where that has been done without the aid of certiorari the Court may look at the proceedings on an application to quash the conviction, and the court is justified in assuming, in the absence of anything indicating the contrary, that the d positions returned contain all the evidence taken in the matter. 3. Midwifery is not surgery or medicine within the meaning of the Medical Profession Ordinance, sec. 60 of the N. W. Territories. R. v. Rondeau, 9 C. C. C. 523, 5 Terr. L. R. 478.

6. **Evidence** — Right to Look at Where Returned with Writ.]—Proceedings were taken before the Commissioner of Public Works and Mines to forfeit certain gold mining areas. They were removed by certiorari and a rule was taken to set aside the forfeiture. The preliminary point was taken that on certiorari the minutes of evidence taken by the magistrate cannot be received. An affidavit may be produced to shew what was proved before the magistrate. Per Rigby, J.—where the statute, in a case like this, says that the magistrate shall take evidence, and he does so and returns it to this court, I think we can look at it. Counsel contended that where a conviction is valid on its face you cannot go behind it and look at the evidence. Per McDonald, C.J.—That is new to me. Per Weatherbe, J.—The practice is the other way. Queen v. Elze, 4 R. & G., N.S.R.130.

7. **Evidence Omitted.**]—Semble, that if material evidence be given before a magistrate, but unintentionally omitted from

his return, an amendment may be allowed to supply it, but only with the concurrence of the parties, and of the witness by whom the deposition was signed in the correctness of the additions, but it cannot be supplied by affidavit. REGINA v. McNANCY, 5 P. R. 438.

8. **Evidence Required.**]—Where a certiorari simply requires a return of the evidence, the magistrate need not return the conviction or a copy of it. REGINA v. McNANCY, 5 P. R. 438.

9. **Evidence Set Out.**]—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 show that there was any other or different evidence given, that 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 been required to return it, or to amend the conviction by setting it out. REGINA v. FLANNIGAN, 32 U. C. R. 593.

10. **Imperial Statute** — SERVICE ON JUSTICES — SUBSTITUTED WARRANT OF COMMITMENT.]—The statute 13 Geo. II., c. 8, s. 5, requiring six days previous notice to convicting justice of motion for certiorari is in force in British Columbia, and service upon the justice of a rule nisi for a certiorari though returnable more than six days after service, will not be treated as a compliance with the statute, following Regina v. Justices of Glamorgan, 5 T. R. 279. The convicting justices after service on them of the rule nisi substituted and brought in on its return a good warrant of commitment, in place of that objected to which was admittedly bad for not following the conviction:—Held, that they were entitled to do so. RE CHARLES PLUNKETT, 3 B. C. R. 484, 1 C. C. C. 365.

11. **Reading Papers Returned with Writ When they are Detached, but Evidently had been Annexed to it.**]—Counsel in support of rule nisi to quash certain proceedings of the Sessions for the County of Halifax, in granting licenses for the sale of intoxicating liquors outside of the city, proceeded to read the writ of certiorari and the papers sent up with it. Counsel opposing rule, objected to the papers being read, on the ground that they were detached and there was nothing to identify them. The court allowed them to be read, as they had evidently been annexed to the writ. IN RE LIQUOR LICENSE, COUNTY OF HALIFAX, 1 R. & C., N. S. R. 257.

12. **Remedy for False Return.**]—The only remedy for a false return to a certiorari is by action on the case at the suit of the aggrieved party, or by criminal information. REGINA v. ARNOLD, 8 C. L. T. Occ. N. 271.

13. **Return** — BY ONE OF SEVERAL JUSTICES.]—A return to a writ of cer iorari made by one of two convicting Justices provided they, having the record in their custody, and can return it, is a sufficient return. REGINA v. LACOURSIERE, 8 Man. L. R. 302.

14. **Return from Justice.**]—A return from justices should be before the court. See LORD v. TURNER, 2 Han. N. B. R. 13.

15. **Return of Proceedings Without Writ.** — WHETHER PROPERLY BEFORE THE COURT WHERE IN ACCORDANCE WITH STATUTE — CODE SEC. 879-888.]—A conviction drawn by the justices was returned with a complete record of the proceedings and filed in the office of the clerk of the court of the Judicial District of Southern Alberta. By sec. 888 of the Criminal Code, it is provided that every justice before whom a person is summarily convicted, shall transmit the conviction to the court to which an appeal is given, etc., and sec. 879 provides the proper court to which the return is to be made. It appeared that the proceedings were returned under sec. 888. There was nothing to show for what purpose they were returned, and they might have been returned and have been properly on the files of the court under the provisions of the said section.:—Held, per Scott and Rouleau, J.J., that the return of the justices being in compliance with statutory provisions to the office of the Supreme Court, the proceedings were therefore regularly before the court and could be dealt with on motion to quash the conviction, without the necessity of a writ of certiorari:—Held, per Richardson and Wetmore, J.J., that a writ of certiorari was necessary to regularly bring the proceedings before the court so as to entertain a motion to quash. R. v. MONAGHAN, 2 C. C. C. 488, 5 Terr. L. R. 495.

16. **Return** — None on Writ — Papers Sent Back to Magistrates.]—Where no return was made by the justices on a writ of certiorari directed to them, the court held the objection fatal, refused to give judgment on the merits, and directed the papers to be sent back to the magistrates, to deal with as it might be thought best. Mosher v. Doran, 3 R. & G., N.S.R. 184.

17. **Return Not Under Seal**—Objection.]—A party appearing to support a conviction cannot object to the cause being proceeded with, because the justice's return to the certiorari is not under seal. Regina v. Oulton, 1 All., N. B. R. 269.

18. **Returnable, When** — Practice.]—By the practice of the court a certiorari is returnable (unless otherwise ordered) at the term next after that in which the rule for it is granted; and if not issued and served before such term, it is too late. Regina v. Harshman, Mich. T., 1872.

19. **Return Day** — None in Writ of Certiorari.]—Writ of certiorari quashed and procedendo awarded where there was no return day mentioned in the writ. Devers v. Gavaza, 4 R. & G., N.S.R. 167.

20. **Summary Conviction** — Wrong Information Returned on Certiorari—Affidavit of Magistrate Explaining—Clerical Error in Date.]—The defendant was convicted before a police magistrate, for keeping intoxicating liquor for sale, contrary to the provisions of the Canada Temperance Act, he was also convicted for selling liquor. The magistrate also made an order for the destruction of the liquor seized under a search warrant. On the return to the writ of certiorari the information by inadvertence was for keeping for sale, instead of for unlawfully selling; an affidavit of the magistrate was read explaining that the papers in the two matters had become transposed.:—Held, that the apparent variation between the information, summons, and adjudication was satisfactorily explained, and the conviction should be sustained:—Held, also that an error in the date of the offence as set out in the information returned with the writ where clearly a clerical error, is not a ground for quashing the conviction:—Held, also, that an order for the forfeiture of liquor seized under a search warrant was based on an information duly laid according to the provision of 51 Vict. c. 34, sec. 108. Ex parte Cavanagh, 2 C. C. C. 267, 34 N. B. R. 1.

VII. Right to.

1. Evidence or findings of fact.
2. Indictment.
3. Justice of the peace or magistrate.
   (a) Bias.
   (b) Jurisdiction.
4. Ministerial or judicial acts.
5. Review or appeal.
6. Waiver.
7. Miscellaneous cases.

1. evidence or findings of fact.

1. **Cheese Factory Act.**]—The right of certiorari is not taken away in cases arising under the act to provide against frauds in the supplying of milk to cheese and butter manufactories, 51 Vict. c. 32 (O), but even if it were the court would not be justified in refusing to examine the evidence to see if the magistrate had jurisdiction. Regina v. Dowling, 17 O. R. 698.

2. **Coroner's Inquisition.**]—The improper reception of evidence is no ground for a certiorari to bring up a coroner's inquisition. Regina v. Ingham, 5 B. &. S. at p. 280, specially referred to. Regina v. Sanderson, 15 L. J 325.

3. **Evidence Rejected.**]—Held, that a defendant is not entitled to remove proceedings by certiorari, to a superior court from a police magistrate or a justice of the peace after conviction, or at any time, for the purpose of moving for a new trial for the rejection of evidence, or because the conviction is against evidence, the conviction not being before the court and no motion made to quash it. But held, that even had the conviction in this case been moved to be quashed, and an order nisi applied for upon the magistrate and prosecutor for a mandamus, to the former to hear further evidence which he had refused, both motions would have been dicharged, the magistrate appearing to have acted to the best of his judgment, and not wrongfully, and his decision as to further evidence involving a matter of discretion with which the court could not interfere. Regina v. Richardson, 8 O. R. 651.

4. **Evidence Rejected.**—Refusal to hear witnesses for defence under 36 Vict., c. 43, (O). Certiorari not taken away by s. 35. See RE HOLLAND, 37 U. C. R. 214.

5. **Evidence** — RIGHT TO LOOK AT ON CERTIORARI.]—Counsel contended that questions as to the sufficiency of the evidence below can be raised on certiorari. Per Rigby, J.—In the Colonial Bank of Australasia v. Willan L. R., 5 P. C., 417, it was expressly held that the only purpose for which you could look at it was to see whether there was any evidence. QUEEN v. LYONS, 5 R. & G., N. S. R. 201.

6. **Not Applicable.**]—Circumstances such as that evidence was improperly admitted, that a full cross-examination of witnesses was not allowed and that an adjournment was improperly refused not going to the jurisdiction of the magistrate, defendant's remedy is not by certiorari. Grounds not taken will not be considered. REGINA v. MCDONALD, 26 N. S. R. 94; REGINA v. HOARE, 26 N. S. R. 100.

7. **Municipal Ordinance** — TRANSIENT TRADER — BY-LAW — PROOF OF BY-LAW — COSTS.]—The Municipal Ordinance (R. O. 1888, c. 8, s. 68, s.-s. 31), authorizes municipal councils to pass by-laws for "licensing, regulating and governing transient traders and other persons who occupy premises in the municipality for temporary periods, and whose names have not been duly entered on the assessment roll in respect of income or personal property for the then current year, and for fixing the sum to be paid for a license for exercising any or all such callings within the municipality, and the time the license shall be in force." The defendant was convicted "for that he, the said defendant whose name had not been entered on the last revised assessment roll of the municipality on, etc., within said municipality, was a sewing machine agent, carrying on his business, occupation and calling as such sewing machine agent without first having obtained a license to do so, contrary to the provisions of By-law No. 25 of the said municipality." On an application for a writ of certiorari it appeared from affidavits filed that the original by-law was produced before the convicting justice, but that neither the original nor a copy was put in as evidence, and it was sought to prove the by-law on this application by affidavit :..Held, 1. That the by-law could not be proved by affidavit on the application for the writ of certiorari. 2. That therefore, the only means available of ascertaining the provisions of the by-law was by reference to the information and conviction. 3. That the offence stated in the conviction was not one which could be created by a by-law passed under the above quoted clause of the Municipal Ordinance, inasmuch as it did not allege that the defendant was "a transient trader or other person occupying premises in the municipality for a temporary period." 4. That costs of quashing a conviction on certiorari will not be granted, unless there be misconduct on the part of the informant or of the justice. THE QUEEN v. BANKS, 2 Terr. L. R. 81.

8. **Question of Fact.**]—A certiorari will not in general be granted when the case in the court below depends on a mere question of fact. LORD v. TURNER, 2 Han., N. B. R. 13.

9. **Question of Fact Within Magistrate's Jurisdiction Not Reviewable.**]—A magistrate's finding upon a question of fact within his jurisdiction will not be reviewed upon certiorari, the proper procedure to open up the conviction being by appeal. THE QUEEN v. URQUHART, 4 C. C. C. 256, 20 Occ. N. 7.

10. **Recorder's Court** — JURISDICTION — REVIEW OF JUDGMENT.]—Certiorari does not lie to review the decision of the recorder in a case in which he has jurisdiction, and the Superior Court will not upon certiorari inquire whether his judgment is right or wrong. WOLF v. WEIR, 4. Q. P. R. 430.

11. **Removal of Cause from Inferior Court** — GROUNDS .. WANT OF JURISDICTION — IRREGULARITY — INJUSTICE.]—The only duty of a superior court, on an application for certiorari, is to determine whether the inferior court has acted within the limits of its jurisdiction, and whether it has complied with the practice and principles of law, and it will not be granted upon the latter ground if the applicant does not shew that he has suffered an injustice. Therefore, the application will be dismissed and the conviction of the lower court sustained when the applicant alleges only that justice has not

been done and the decision of the lower court is erroneous, without alleging any grave irregularity in the proceedings. CARPENTIER v. LAPOINTE, Q. R. 25 S. C. 395.

12. **Summary Conviction** — FAILURE TO TAKE DOWN EVIDENCE IN WRITING.] —A summary conviction for assault was quashed because the magistrates did not take down the evidence in writing. DENAULT v. ROBIDA, 8 C. C. C. 501, 10 Q.R., S.C. 199.

13. **Supreme Court of Canada** — INQUIRING INTO MERITS.]—Application was made to the Chief Justice of the Supreme Court of Canada in chambers, on behalf of a person arrested on a warrant issued on a conviction by a magistrate, for a writ of habeas corpus, and for a certiorari to bring up the proceedings before the magistrate, the application being based on the lack of evidence to warrant the conviction. The application was dismissed. On appeal to the full court :—Held, the conviction having been regular, and made by a court in the unquestionable exercise of its authority and acting within its jurisdiction, the only objection being that the magistrate erred on the facts, and that the evidence did not justify the conclusion at at which he arrived as to the prisoner's guilt, the Supreme Court could not go behind the conviction and inquire into the merits of the case by the use of a writ of habeas corpus, and so constitute itself a court of appeal from the magistrate's decision. IN RE TREPANIER, 12 S. C. R. III.

The only appellate power conferred on the court in criminal cases is by s. 49 of the Supreme and Exchequer Court Act, and it could not have been the intention of the legislature while limiting appeals in criminal cases of the highest importance, to impose on the court the duty of revisal in matters of fact of all summary convictions before police or other magistrates throughout the Dominion. IB.

Section 34 of the Supreme Court Amendment Act of 1876, does not in any case authorize the issue of a writ of habeas corpus granted by a Judge of the Supreme Court in chambers ; and as the proceedings before the court on habeas corpus arising out of a criminal charge are only by way of appeal from the decision of such Judge in chambers the said section does not authorize the court to issue a writ of certiorari in such proceedings ; to do so would be to assume appellate jurisdiction over the inferior court. IB.

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2. INDICTMENT.

1. **Indictment.**]—An indictment cannot be removed by certiorari from the court of general quarter sessions to the Queen's Bench after verdict, even by consent of the parties. REGINA v. LAFFERTY, 9 U. C. R. 306.

2. **Indictment.**]—Nor from the assizes after judgment pronounced for the purpose of applying for a new trial. REGINA v. SMITH, 10 U. C. R. 99 ; REGINA v. CRABBE, 11 U. C. R. 447.

3. **Indictment** — ACQUITTAL.]—After an acquittal case, the court refused a certiorari to remove the indictment with a view of applyir.g for a new trial or to stay the entry of judgment so that a new indictment might be preferred and tried without prejudice. REGINA v. WHITTIER, 12 U. C. R. 214.

4. **Indictment** — ACQUITTAL.]—After acquittal for nuisance a motion was made for a certiorari to remove the indictment with a view to new trial, no ground being shewn by affidavit ; and the new trial was moved for on the same day, being the fourth day of term :—Held, that the certiorari, after acquittal, could not issue as of course ; but that if it could, it would have been unnecessary to move for a new trial within the first four days of term. REGINA v. GZOWSKI, 14 U. C. R. 591.

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3. JUSTICE OF THE PEACE OR MAGISTRATE.

(a) Bias.

1. **Grounds Taken in Rule to Quash Writ** — PARTY CONFINED TO THESE—NOTICE TO JUSTICE WHERE ACTING AS A STATUTORY COURT — AFFIDAVIT REQUIRED BEFORE ISSUE OF WRIT — ACTS 1879, c. 12, s. 1, N. S.— DISQUALIFICATION OF MAGISTRATE THROUGH INTEREST.]—The defendant was convicted before F. A.

Laurence, stipendiary magistrate, presiding in the town court of Truro, of selling intoxicating liquors contrary to law. The stipendiary magistrate was a ratepayer of the town, and received a fixed salary as stipendiary, payable out of the funds of the town, to which half the penalty imposed became payable :—Held, that the magistrate was disqualified by interest from acting in the matter. But see now 5th R. S., c. 109. The ground was taken in the rule to quash the certiorari that the bond filed was irregular and bad in substance and form :—Held, that under this ground the objection could not be taken that a bail-piece should have been filed instead of a bond. The certiorari was attacked on the ground that no notice had been given to the magistrate as required by the Imperial Statutes, 13 Geo. II., c. 18, but no such ground was taken in the rule :—Held, that this ground could not be taken at the argument. Quære, whether the rule requiring notice applied to this case, where the justice acted as a special Statutory Court and not simply as a justice of the peace. The ground was also taken that the affidavit required by c. 12 of the Acts of 1879 (stating that the defendant had not sold intoxicating liquors contrary to law, as charged in the summons) had not been made :—Held, that the statute did not apply where the proceedings were coram non judice :—Held, further, that in cases such as the present, certiorari would lie after judgment, notwithstandng the general rule that in civil cases certiorari will not lie after judgment :—Held, further, over-ruling Crawley v. Anderson, 1 N. S. D., 385, that it is no objection to the writ of certiorari that an appeal also would lie. TUPPER v. MURPHY, 3 R. & G., N. S. R. 173.

2. **Disqualification of Magistrate** — BIAS — RELATIONSHIP — REFUSAL OF THE JUSTICE TO GIVE EVIDENCE.]—It is not a sufficient ground to raise a reasonable presumption of bias, that the neice of the presiding magistrate happened to be the wife of the assistant License Inspector, who had no connection with the particular prosecution in question. The prosecution having been carried on by the chief License Inspector. The fact that a justice is a ratepayer in the county in which he presides is no ground for disqualification. Where it is sought to set a conviction aside on the ground of refusal of the presiding magistrate to be sworn as a witness, it must be shown that he was required bona fide as a witness, that he could give material evidence, and that the defendant has been prejudiced. When the conviction itself is extended at the time of adjudication, it constitutes a sufficient "minute of adjudication" without any other being made or entered. EX PARTE FLANNAGAN, 2 C. C. C. 513, 34 N. B. R. 326.

(b) Jurisdiction.

1. **Canada Temperance Act** — EXCESS OF JURISDICTION — FIRST OFFENCE.]—Defendant was convicted of a first offence under the Canada Temperance Act, 1878, and for such offence was adjudged to pay the sum of $50.00 and costs, and if the said several sums were not paid forthwith that the same be levied by distress and sale of the goods and chattels of defendant, and in default of sufficient distress that defendant be imprisoned in the common jail for the space of three months, unless the said several sums and all costs and charges of such distress and of the commitment and conveying of the defendant to jail be sooner paid :—Held, that the conviction should not have gone further than to impose the fine and costs, leaving subsequent proceedings in the matter for a further application to the same or another justice. Quære, whether imprisonment could be awarded in such a case for a first offence. QUEEN v. ORR, 20 N. S. R. (8 R. & G.) 426, 9 C. L. T. 119.

2. **Canada Temperance Act** — IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE.] —Held, that sec. 872 of the Criminal Code gave a justice authority on a conviction under the Canada Temperance Act to adjudge imprisonment in default of payment of the fine, and that it was not necessary to adjudge the fine and costs to be levied by distress first. EX PARTE CASSON, 2 C. C. C. 483, 34 N. B. R. 331.

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3. **Canada Temperance Act, 1878**— PENALTY IN EXCESS OF THAT AUTHORIZED BY ACT—MOTION TO AMEND CONVICTION—CONSTRUCTION OF SECS. 117 AND 118—IMPRISONMENT IN DEFAULT OF

DISTRESS—IMPERIAL ACT 13 GEO. II. c. 18, not IN FORCE HERE—OBJECTION BY SUBSTANTIVE MOTION.]—Defendant was convicted for unlawfully selling intoxicating liquor contrary to the provisions of the Canada Temperance Act, 1878, and adjudged for such offence to forfeit and pay the sum of $100, and also to pay the prosecutor $7.19 for his costs, and if such sums were not paid on or before a day appointed, it was ordered that the same should be levied by distress of the goods and chattels of the defendant, and in default of distress, that the defendant should be imprisoned for the space of two months, unless such sums were sooner paid :—Held, that the conviction, if for a first offence, was bad on the ground that the penalty imposed was in excess of that authorized by the Act, and if for the second offence, on the ground that it was made in the absence of defendant and without notice. A motion having been made to amend the conviction under the Act, sections 117 and 118, by reducing the amount of the fine :—Held, that the power of the court to make such amendment was taken away by the words of the section 117, "provided there is evidence to prove such offence and no greater penalty is imposed than is authorized by such Act." Also, that the latter part of sec. 117 must be read as if the words "for the offence charged" were added. The magistrate making the conviction having imposed two months imprisonment in default of distress :—Held, that his jurisdiction, so far as related to the trial and conviction, ceased when he made the conviction and imposed the penalty, and that he had no authority at that time to fix any term of imprisonment until after the return is made and he knows the amount remaining unpaid. Regina v. Hyde, 9 E. C. L. & E. E. 305 distinguished. QUEEN v. PORTER, 20 N. S. R. (8 R. & G. 352), 9 C. L. T. 57.

4. **Finality of Magistrate's Judgments**—POWER TO REVIEW—NO EVIDENCE—JURISDICTION LIMITED AS TO CLASS OF PERSONS—COLLATERAL FACT NECESSARY TO JURISDICTION.]—Plaintiff contracted with one Feltmate, who professed to be the owner of a vessel, to sail her as master at a stipulated rate of wages. After lapse of six months, Feltmate, who had up to that time been on board, left the ship, and plaintiff discovered that he was not the owner, the possession of the ship having been demanded by the defendant, the real owner. Plaintiff then sued defendant for wages as master, before the stipendiary magistrate, under the Canadian Statutes of 1873, c. 129 52 and 39, which enable a master to sue for wages due him, not exceeding $200 :—Held, that the stipendiary had no jurisdiction, and that the judgment could be reviewed on certiorari. McDonald, C. J., and Rigby, J., dissenting. Per Thompson, J., and Smith, J., that there was no evidence of a contract upon which the action could be based. Per Weatherbe, J., that the case came within the principles as to a jurisdiction given to try cases between persons of a specified class or classes, and the magistrate had no evidence of either of the two classes suing and being sued respectively in this case. In this case there is a most elaborate discussion of the cases in which certiorari will lie to remove proceedings before inferior courts where the decision of such courts is made final by statute. HAWES v. HARA, 6 R.&G., N.S.R. 42, 6 C.L.T. 140.

5. **Magistrate not Qualified.**]—The only evidence offered in proof of an objection that the magistrate before whom the recognizance in this case had been taken, was not 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, 21 C. P. 354

6. **Magistrate no Jurisdiction.**]—Held, that the defendant appearing on the evidence returned, to have bona fide asserted a claim to the land which he had enclosed, it was not a proper case for the adjudication of the mayor of B., under s.-s. 72 or 185 of 12 Vict. c. 82, and that consequently the mayor's summary conviction of the defendant under that Act, might be quashed by certiorari. REGINA v. TAYLOR, 8 U. C. R. 257.

7. **Summary Conviction**—HEARING TWO OFFENCES — RESERVING JUDGMENT IN ONE.]—Application for certiorari was made on the ground that the magistrate heard two informations for two similar offences, reserving judgment until the second case was concluded :—Held, that the conviction was invalid. Where shewn that the magistrate was governed in his

decision solely by the evidence adduced in each respective case. REX v. SING, 6 C. C. C. 156, 9 B. C. R. 254, 22 Occ. N. 423.

8. **Temperance Act**—ABSENCE OF JURISDICTION.]—Semble, that although the Temperance Act of 1684, 27 & 28 Vict. c. 18, s. 36, takes away the right of certiorari and appeal, a certiorari may be had when there is an absence of jurisdiction in the convicting justice, or a conviction on its face defective in substance but not otherwise. IN RE WATTS, IN RE EMERY, 5 P. R. 267.

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4. MINISTERIAL OR JUDICIAL ACTS.

1. **Administrative Act.**]—Certiorari does not lie where the act is administrative or legislative exercise of authority but lies only to inferior courts and officers exercising judicial functions. RE TOWN COUNCIL OF NEW GLASGOW, 1 C. C. C. 22, 30 N. S. R. 107.

2. **Applies only to Judicial Proceedings**—TOWN COUNCIL.]—Certiorari only lies to inferior courts and officers exercising judicial functions, and the act to be reviewed must be judicial in its nature, not legislative or ministerial. The action of the council of an incorporated town in passing a resolution looking to the better enforcement of the Canada Temperance Act, and providing for a division of the fines to be imposed, with volunteer informers, is a ministerial not a judicial act, and certiorari does not apply. IN RE TOWN COUNCIL OF NEW GLASGOW, 30 N. S. R. 107.

3. **Assessment Roll** — RETURN — DEFAULT—PROCEEDINGS FROM MINISTERIAL CHARACTER — SUPERSEDING WRITS IMPROVIDENTLY ISSUED.]—A writ of certiorari was directed to the road commissioners of district 17 in the municipality of Halifax, to remove the record of the assessment roll of said district assessing the inhabitants for road taxes, and the return made to the county treasurer of persons who had made default. A writ was also directed to the stipendiary magistrate for the county to remove the record of a return of defaulters who had not paid or commuted their taxes, and the warrant of distress issued by him thereon. There was a motion to quash or set aside the assessment roll, the warrant of distress, etc. It appeared that the allowance of the writ had not been opposed, and there was no motion to set aside the orders, or to quash the writs or either of them. The amount of the tax was fixed by law, the value of the property by the county assessors, and the rate of assessment by the county council; and the stipendiary magistrate, in issuing his warrant of distress against defaulters, was not called upon to exercise any judicial function :—Held, that the proceedings were of a purely ministerial character, and were not a proper subject for certiorari :—Held, that the process having improvidently issued, the court had power of its own motion to set it aside, and that, in the circumstances appearing the writs should be superseded and the returns thereto taken off the files of the court. The affidavits filed shewed an intention to attack the legality of the formation of the district under Acts of 1900, c. 23, and the appointment of the commissioners :—Held, that this could not be done in this form of proceeding. REX ET AL. CORBIN v. PEVERIL, 36 N. S. Reps. 275.

4. **Commissioner of Mines.**]—Certiorari to the Commissioner of Mines will lie to remove proceedings relating to the forfeiture of areas. His functions under the Act in this behalf, and probably in others, are of a judicial and not merely ministerial character. One test of this is the discretion with which he is clothed to decree or not to decree forfeiture in certain cases, another that the appeal from his decision is to the Supreme Court. Weatherbe, J., and Graham, E. J., dubitantibus, as to whether he does not merely act as a judge or as a landlord. REGINA v. CHURCH, 23 N. S. R. 347.

5. **Judicial and Ministerial Acts**—WILL NOT LIE TO REMOVE PROCEEDINGS PURELY MINISTERIAL—WHEN OBJECTION MAY BE TAKEN—VOID PROCEEDINGS—ISSUING WARRANT AGAINST REAL ESTATE OF NON-RESIDENT MINORS WITHOUT ORDER OF COUNTY COURT JUDGE—CONSOL. STAT. CAP. 10, S.-S. 17, 74, 75 AND 77.]—The issuing of a warrant by the secretary of the municipality under the 74th section of chapter 10 of the Consolidated Statutes, to sell the real estate of non-residents for the purpose of collecting

the amount of an assessment against them, is not a judicial act, and the court has no power to grant a certiorari to remove the warrant. The objection that the act of the secretary is a ministerial and not a judicial one, may be taken when showing cause against the rule to quash the warrant. Semble, the issuing of a warrant under Consol. Stat. cap. 100, s. 77, against the real estate of non-resident minors under an assessment made against their guardian without the order of the County Court Judge, as provided in s. 17 is bad. REGINA v. SIMPSON, 20 N. B. R. 472.

6. **School Rates**—JUDICIAL ACT.]—An application to bring up by writ of certiorari the school rate fixed by the trustees of the section, was granted. IN RE CAPE BRETON SCHOOL SECTION NO. 121, 24 Occ. N. 95.

7. **Senate of University.**]—A certiorari is only granted to bring up the judicial acts of some inferior tribunal. The acts of the Senate of he University of New Brunswick in dismissing one of the professors are not judicial acts, and therefore not subjected to be reviewed by this court. EX PARTE JACOB, 5 All. N.B.R. 153.

8. **Warrant of Commitment**—PROPER PROCEDURE TO REVIEW—HABEAS CORPUS.]—Where a conviction itself is good, the fact that the commitment is bad does not invalidate the conviction. The commitment is not a judicial but merely a ministerial act, and is not a proceeding which can be brought up on certiorari. EX PARTE BERTIN, 10 C. C. C. 65.

5. REVIEW OR APPEAL.

1. **Appeal Pending from Order Granting Writ**—MOTION TO QUASH.]—A conviction was entered against the defendant under the Canada Temperance Act and a forfeiture of the liquor ordered. On an application for certiorari an order was made to bring up the forfeiture order; on the return, the conviction was also included :—Held, on a motion to quash, that pending the determination by the Court of Appeal whether the order nisi could be sustained, and the record shown to have been legally removed into the higher court, the motion to quash should not be heard. R. v. HURLBURT, 2 C. C. C. 331, 26 N. S. R. 123, 27 N. S. R. 62.

2. **Appeal, right of, not Exhausted**—SUMMARY CAUSE—NO JURISDICTION IN SUPREME COURT TO RE-HEAR ON CERTIORARI.]—Defendant, in a cause in the City Court, filed and served his grounds of defence unsigned. The magistrate after the plaintiff had been sworn, decided that the grounds were insufficient and directed judgment by default to be entered. Defendant brought the cause up by writ of certiorari :—Held, that an appeal lay from the judgment below, and further that nothing could be done with the cause under the certiorari, as the matter was a summary one and the summary jurisdiction of the Supreme Court had been taken away. Per Young, C. J., we have always held that certiorari does not lie when there is an appeal. EAGAR v. CAREY, 1 R. & G., N. S.R. 49.

3. **Assessment**—WATER COMMISSIONERS OF ST. JOHN.]—Certiorari refused to bring up an assessment of the Water Commissioners of St. John under the Act 18 Vict. c. 38, though the certiorari was not taken away by the Act. An appeal to the common council being given to persons aggrieved by the assessment. EX PARTE NOWLIN, 6 All. N. B. R. 141.

4. **Bail**—DEFECT IN—ALLOWANCE OF WRIT AFFECTED BY RIGHT OF APPEAL, OR WANT OF JURISDICTION TO INQUIRE INTO FACTS ANEW—ORDER FOR MUST SHOW JURISDICTION—IMPERIAL ACT, 13 GEO. II., c. 18, WHETHER APPLICABLE TO THIS PROVINCE—QUEEN v. MCFADDEN, 6 R. & G. 426, REVIEWED.]—A writ of certiorari was issued on bail taken, not as prescribed by the statute, "to respond the judgment," but upon a condition forbidden by the statute, viz., that the rendering of the body should exonerate the bail :—Held, that the writ ought not to have been issued :—Held, further, that the writ should not have been allowed as there was a right of appeal existing in the court below, of which the defendant had not availed himself, or accounted for his failure to do so; and also as the summary jurisdiction of the Supreme Court had been taken away, so that the facts could not be inquired into anew or the case satisfactorily disposed of. Also, that the order allowing the certiorari was bad, as not showing on the face of it the facts necessary to give jurisdiction to the commissioner by whom it was granted, and that the objection was sufficiently taken

in the notice of motion to set aside the writ when it stated that the order for the writ did not show on the face of it that the commissioner who granted the same had jurisdiction to grant the same. Quære, whether the Imperial Act, 13 Geo. II cap. 18 applies to this Province. QUEEN v. MCFADDEN, 6 R. & G., N. S. R. 426, WALLACE v. KING, 20 N. S. R. 283.

5. **Conviction Good on its Face.**]—Whether court will go into facts on certiorari where right of appeal to General Sessions has been taken away by statute. R. v. HUGHES, 2 C. C. C. 8, 29 O. R. 179.

6. **Conviction**—APPEAL.]—Where a defendant, having been convicted of evading toll, appealed to the quarter sessions, where he was tried before a jury and acquitted, this court refused a certiorari, to remove the proceedings, the effect of which would be to put him a second time upon his trial. STEWART v. BLACKBURN, 25 U. C. R. 16.

7. **Conviction Quashed.**]—A. engaged B. and his hired man C. to build a house for him, and agreed to pay B. his ordinary wages, and $1 per diem for C. A. making default, was convicted before a magistrate under the Master and Servant Act, and ordered to pay B. $15.50 for C's. services. A. appealed, but the appeal was adjourned to another session when the conviction was quashed. B. then obtained a summons to shew cause why a certiorari should not issue to return the order quashing the conviction, &c., in the Queen's bench :—Held, that the applicant had a right to the certiorari; but, semble, that the proceedings to reinstate this conviction were unnecessary. IN RE DOYLE AND MCCUMBER, 4 P. R. 32.

8. **Conviction** — APPEAL.]—Conviction —Appeal under 38 Vict., c. 11 (O)—Delay—Transmission of Papers—Return of Certiorari—Duty of justices of the peace. See REGINA v. SLAVEN, 38 U. C. R. 557.

9. **Conviction** — APPEAL.]—Where a conviction confirmed on appeal to the sessions, was brought up by certiorari, contrary to 32 & 33 Vict., c. 31, s. 71 (D) as amended by 33 Vict., c. 27, s. 2 which enacts that in such case no certiorari shall issue :—Held, that the court could not quash the conviction (the case being one in which the magistrate had jurisdiction), though it was clearly bad and no motion had been made to quash the certiorari. REGINA v. JOHNSON, 30 U. C. R. 423.

10. **Conviction** — APPEAL.]—Notice of appeal given, but insufficient — Certiorari therefore not taken away. REGINA v. CASWELL, 33 U. C. R. 303.

11. **Conviction** — APPEAL FAILING OWING TO REFUSAL OF JUSTICE TO MAKE RETURN — RIGHT TO CERTIORARI.] Where through the failure and refusal of a justice to file a return of the proceedings before him, an appeal proves abortive, the court will grant certiorari notwithstanding that an appeal had been given, owing to the exceptional circumstances of the case. EX PARTE COWAN, 9 C. C. C. 454, 36 N. B. R. 503.

12. **Illegal Adjudication** — APPEAL.]— The divisional court of Queen's Bench has power to quash a conviction for an illegal adjudication of punishment, although it has been appealed against and affirmed in respect to such adjudication ; and s. 71 of 32 & 33 Vict., c. 31 (D) does not take away the certiorari in such a case. MCLELLAN v. MCKINNON, 1 O. R. 219.

13. **Improvidently Issued** — APPEAL NOT TAKEN — 4TH R. S., c. 21, s. 61 — SCHOOL — POWERS OF TRUSTEES TO CALL SPECIAL MEETING.]—Section 34, sub-section 8, of the chapter of the Public Instruction, 4th R. S., cap. 32, provided that it should be the duty of the trustees to call a special meeting of the section, due notice being given by the school or otherwise, for the purpose of, etc., and for any other necessary purpose. Section 37 required the trustees, upon the requisition of a majority of the ratepayers, to convene a special meeting of the ratepayers for the purpose of voting money or adding to any amount previously voted. At the annual meeting of School Section 29 the money required for schools was not voted, and the meeting instructed the trustees to call another meeting for the purpose, which they did, but acted under the impression that the meeting must be called under a requisition, as provided by sec. 37. The matter was brought up by certiorari, and a rule nisi taken to set aside the assessment, the affidavits on both sides being drawn on the assumption that the meeting

could only be called under section 37, requiring a requisition from a majority of ratepayers.:—Held, that no such requisition was necessary, that the trustees could call the meeting of their own motion, and that, whether the requisition was signed by a majority of ratepayers or not, the action of the meeting was legal and valid. **Per McDonald J., there is** another view of the case which is fatal to the certiorari, and that is that it was not issued in accordance with the law which governs such cases. 4th R. S., c. 32, s. 54, provides that moneys voted, "in default of payment of the same shall be collected under and by virtue of 4th R. S., c. 21. That chapter gives a remedy to the party aggrieved by appeal to the sessions, but provides (c. 21, s. 62), that such appeal shall not delay the collection or recovery of the sum assessed upon the appellant. The policy of the statute is to enforce the immediate payment of the money assessed in both cases, giving the appellant the right to have the money restored to him if he be improperly assessed. But in this case that policy and the plain meaning of the law are defeated when, by issuing a writ of certiorari, the collection of the money is stopped by a few in numbers. The remedy by removing cases of assessment to this court by certiorari is given by c. 21, s. 67, but not at the time or in the manner in which is is sought here. To my mind it is clear that the parties who instituted these proceedings should, if aggrieved, have resorted to the remedy of appeal given by c. 21, s. 61 of R. S. "without prejudice," to the whole or any part of the assessment. This view of the law, if I recollect aright, was taken by the court in the case of a certiorari. In re School Section 42, 3 N. S. D. 122. In re School Section, No. 29, 3 R. & C., N. S. R. 207.

14. **Improvidently Issued** — Appeal Not Exhausted — 3rd R. S., c. 45, s. 67 — Assessment — Certiorari.]—Where every material fact in the affidavit upon which a certiorari was founded was negatived in the affidavit on the other side :—Held, that the certiorari must be quashed. Where the grounds of an appeal from an assessment are simply matters of detail, the appeal should be primarily to the court of sessions, and resort should not be had to the Supreme Court by certiorari in the first instance. The court of sessions has power to set aside a whole assessment where it manifestly appears that it has been irregularly and therefore illegally made. In re Assessment School Rate, Section 42, Antigonish, 3 N. S. D. 122.

15. **Insolvent Act of 1869.**]—A demand mas made upon a debtor under section 14, of the Insolvent Act, 1869, requiring him to make an assignment of his estate and effects for the benefit of his creditors. The debtor presented a petition under section 15 to the County court Judge, upon hearing which he decided that the demand was inoperative and ordered that no further proceedings be taken.:—Held, that as there was an appeal from the Judge's decision, a certiorari would not lie to remove the proceedings. Ex parte Thomas, 2 Han. N. B. R. 163.

16. **Nature and Grounds** — No Appeal.] —A statute providing that there should be "no appeal" against a conviction :—Held, not to take away the right of certiorari. Regina v. Vrooman, 3 Man. L. R. 509.

17. **Not Granted When Appeal The Proper Course.**]—The court, in the exercise of its discretion, will refuse to grant certiorari if, upon the affidavits in support of the application, it appears that the ground alleged for it is most properly the subject of appeal. The Queen v. Herrell, 3 C. C. C. 15, 12 Man. L. R. 198, 522.

18. **Null Proceeding** — Certiorari Where no Appeal.]—On an application for certiorari to remove the matter of a decree of the Probate Court, it was objected that certiorari could not be had because the decree read in favor of the applicant :—Held, that as the decree was a nullity for want of jurisdiction, there was no appeal, consequently certiorari was the proper means of relief. Regina v. Foster, Estate of Eason, 30 N. S. R. 1.

19. **Objections that Writ not Directed to Persons Exercising Judicial Functions** — Substantive Motion — Right of Appeal to be Considered When Granting Writ — Rule to Quash an Assessment Removed into the Supreme Court by Certiorari.]—The assessment had been appealed against on the ground that it was too high relatively to others, to the court provided for by sec. 10 of the

by-laws of the town of Windsor, and by that court confirmed. The assessment was afterwards confirmed by the town council. Counsel contended that this was not a case for a writ of certiorari, because the matter complained of did not arise from the exercise of judicial functions. Per McDonald, J.—Should not that point be made the subject of a substantive motion? The objection was raised that an appeal should have been taken from the assessment of the others as too low. Per McDonald, J.—Can we review the assessment of the others, who have never been brought before the Court of Appeal? Per Weatherbe, J.—I do not see that the appeal is an estoppel. It is always proper to consider the fact of a right of appeal existing when granting a writ of certiorari. Rule discharged with costs. WIGGINS v. TOWN OF WINDSOR, 3 R. and G. 256.

20. **Proceedings Before Police Magistrate, St. John.**]—A conviction before the police magistrate of St. John for a breach of the by-laws of the corporation cannot be removed by certiorari, the provisions of the 36th and 37th sections of the Portland Police Act, 11 Vict., c. 12, by which the certiorari is taken away, and an appeal given being incorporated in the St. John Police Act, 12 Vict., c. 18. EX PARTE HARLEY, 5 All. N. B. R. 264.

21. **Province of Quebec** — APPEAL TO CROWN SIDE OF COURT OF KING'S BENCH.] —A writ of certiorari was issued to have reviewed a decision of a recorder.:—Held, that certiorari would not lie where there is an appeal from the decision of the Inferior Court to the Crown side of the Court of King's Bench. O'SHAUGHNESSY v. CITY OF MONTREAL, 9 C. C. C. 44, 6 P. Q. R. 287.

22. **Provision in Statute for Appeal** — DISCRETION AS TO CERTIORARI.]—Where a statute provides a remedy by way of appeal from a conviction, certiorari not to go unless in exceptional circumstances. EX PARTE ROSS, 1 C. C. C. 153, 33 N. B. R. 80.

23. **Quashed** — INSUFFICIENT GROUNDS AND NO RETURN — RIGHT OF APPEAL MUST BE EXHAUSTED.]—Writ of certiorari quashed, the affidavit on which it was issued not disclosing sufficient grounds and there being no return to the writ. Per DeBarres, J.—We have decided that a party having an opportunity to appeal must avail himself of it, and, if he does not, certiorari will not lie. THE TOWN OF PICTOU v. MCDONALD, 3 R.&G., N.S.R. 334.

24. **Recorder's Court** — REMOVAL OF CONVICTION — REMEDY BY APPEAL.]— A certiorari will not be granted to remove a conviction or order of a recorder, when there is an appeal to the Court of King's Bench on its criminal side. O'SHAUGHNESSY v. RECORDER'S COURT, 6 Q. P. R. 287, 9 C. C. C. 44.

25. **Remedy by Review.**]—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. N. B. R. 274.

26. **Remedy by Review.**]—Where a Judge grants a rule nisi for a certiorari, the Court will entertain the motion although the party complaining might have proceeded in a summary way by review. EX PARTE WILSON, 1 P. & B. N. B. R. 274.

27. **Review of Decision of Inferior Court.** — GROUNDS.]—There is no appeal to the Superior or Circuit Courts by way of certiorari from decisions of courts of inferior jurisdiction, on the ground of mal juge, or where the Judge of the lower court has failed to properly appreciate the evidence. CALVERT v. PERRAULT, Q. R. 26 S. C. 94.

28. **Right to** — NOT ENTITLED TO AS MATTER OF RIGHT.]—Where an appellant is afforded a complete remedy by appeal and no occasion exists for a resort to certiorari, he is not entitled to demand certiorari as a matter of course. RE RUGGLES, 7 C. C. C. p. 106, 35 N. S. R. 57.

29. **Sessions** — APPEAL.]—Held, that though not expressly so enacted 49 Vict., c. 49 (D), is retrospective in its operations and applies to convictions whether made before or after the passing of the Act,

and that under s. 7, the right to certiorari is taken away upon service of notice of appeal to the sessions, that being the first proceeding on an appeal from the conviction. REGINA v. LYNCH, 12 O. R. 372.

30. **Sessions** — APPEAL]—The defendants having been convicted by a police magistrate of an offence against the provisions of C. S. C. c. 95, appealed to the quarter sessions, and the convictions were affirmed. Defendants now applied for a certiorari to remove the convictions, notwithstanding that 32 & 33 Vict., c. 31, s. 2 (D), as amended by 33 Vict., c. 27, s. 2 (D), expressly takes away the right to certiorari where there has been an appeal to the sessions :—Held, that where the magistrate has jurisdiction over the offence charged, and the right to certiorari is taken away, the court cannot examine the evidence to see if the magistrate had jurisdiction to convict, and the certiorari was refused. REGINA v. SCOTT, 10 P. R. 517.

31. **Sessions** — APPEAL.]—Quære, whether the right to a certiorari was taken away by an appeal to the quarter session. REGINA v. SPARHAM, 8 O. R. 570.

32. **Sessions.**]—In the case of a conviction for an offence, not being a crime, affirmed on appeal to the sessions, the writ of certiorari is not taken away by 38 Vict., c. 4 (O). IN RE BATES, 40 U. C. R. 284.

33. **Sessions** — APPEAL — REJECTION OF EVIDENCE.]—The defendant was convicted by two justices of the peace under the Weights and Measures Act, 42 Vict., c. 16, s. 14, s.-s. 2 (D), as amended by 47 Vict. c. 36, s.-s. 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 the 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.

34. **Summary Conviction** — APPEAL — SEC. 897 CODE.]—Criminal Code sec. 897 does not refer to certiorari proceedings but to appeals to the court of the General Sessions of the Peace. REGINA v. HENRY GRAHAM, 1 C. C. C. 405, 29 O. R. 193.

35. **Stated Case** — APPEAL FROM DECISION OF SINGLE JUDGE BY RULE NISI.]—Defendant was convicted for an infraction of the Indian Act, and obtained a stated case under sec. 900 of the Code, electing to go before a single Judge. The conviction being upheld, application for a rule nisi was made and granted :—Held, by the full court that the motion was in effect an appeal from the decision of a single Judge upon the case stated, and no such appeal is contemplated by the provisions of the Code ; that the grounds for the motion were the same as on the stated case, and were therefore res judicata. R. v. MONAGHAN, 2 C. C. C. 488, 5 Terr. L. R. 495.

36. **Summary Conviction** — JURISDICTION — RIGHT OF APPEAL.]—The court will not refuse to grant a certiorari, in the exercise of a sound judicial discretion, because the defendant might have had a right of appeal to the County Court, or moved to quash the by-law under which the conviction was made. R. v. TRAVES, 10 C. C. C. 63, 7 B. C. R. 48.

37. **Summary Convictions Act (Ont.)** — NO ADEQUATE REMEDY BY APPEAL.]—The amendment made by 2 Edw. VII., c. 12, s. 14, to the Ontario Summary Convictions Act, sec. 7, which enacts that no conviction shall be reviewed by certiorari except where an appeal would not effect an adequate remedy, does not preclude the grant of the writ of certiorari where the magistrate has no jurisdiction over the matter adjudicated. REX v. ST. PIERRE, 5 C. C. C. 365, 4 O. L. R. 76, 1 O. W. R. 365.

38. **Summary Conviction** — ABORTIVE APPEAL.]—Where an appeal has proved abortive owing to the default of the

magistrate in returning the deposit, a writ of certiorari will be granted notwithstanding the abortive appeal. R. v. ALFORD, 10 C. C. C. 61.

39. **Where there was an Appeal Allowed by Statute but none taken**—WRIT OF, SUSTAINED NOTWITHSTANDING.]—Three magistrates, forming a part of the Court of Sessions, by whom the return of a precept issued under 2nd R. S. c. 62, for laying out a road is to be decided, are not the three disinterested freeholders contemplated by that Act. The proceedings of the sessions were brought up by certiorari. Objection was taken that certiorari was not the proper mode of questioning the proceedings, but that an appeal should have been taken under sec. 5 of 2 R. S. c. 62. Per Wilkins, J., the only question here, it seems to me is whether the parties ought not to have appealed from the decision of the sessions, as provided for by the statute. But it would be a mockery of justice to compel them to resort to that course. For after that appeal it would be competent for the parties to bring up the proceedings here, and the objection now taken would be open to them. Court were unanimous in making absolute the order to quash the proceedings. QUEEN v. CHAPMAN, 2 Thom. N. S. R. 292.

40. **Where Right of Review Exists**—DELAY IN APPLYING.]—Where a right of review exists, certiorari will be granted under very exceptional circumstances. Where there has been delay in applying for a certiorari, such delay must be satisfactorily explained. EX PARTE PRICE, 23 N. B. R. 85.

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6. WAIVER.

1. **Adjournment of Proceedings Obtained on Ground of Absence of Witness**—THEN PROCEEDINGS REMOVED BY CERTIORARI—SERVICE OF RULE NISI TO QUASH—WAIVER.]—Defendant, brought before justices of the peace on a charge of selling intoxicating liquors contrary to law, obtained a continuance after the investigation had been partially gone into alleging absence of a material witness. Before the day to which the trial was continued by the justices he sued for a writ of certiorari to remove the proceedings to the Supreme Court. A rule nisi was obtained to quash the certiorari, which was served, not on the attorney whose name appeared on the præcipe for the writ of certiorari but on his late partner. No attorney's name appeared on the writ itself. Nothing was done on the return day of the rule nisi but afterwards a rule was obtained from a Judge at chambers to enlarge it and have the cause placed on the docket for the then next term. On the argument of this rule the attorney of defendant stated that he did not appear to show cause because the rule as he contended had not been served and that if the service was held to be good he wanted an opportunity to appear:—Held, that the objection to the service of the rule had been waived by the attorney appearing, and that no authority being shown to justify the issuing of the certiorari after the commencement of the investigation and before judgment, the grounds disclosed in the affidavit for certiorari being merely formal or frivolous, and the Supreme Court having no power to try the cause anew, as its summary jurisdiction had been abolished, the certiorari should be quashed and the cause remitted to the justices. Quære, whether the writ of certiorari was not defective for want of the name of an attorney. Weatherbe, J., dissenting, held that the original rule nisi had expired and could only have been revived by a motion in term, a Judge at chambers having no power to deal with the subject; and further, that there had been no waiver of the want of service. BLOIS v. RICHARDS, 1 R. & G. N. S. R. 203.

2. **Commissioners Altering Road.**]—The granting a certiorari being discretionary it was refused to bring up the proceedings for the alteration of a public road, where the applicant had allowed one term to elapse, and the road had been opened in the meantime. REX v. HEAVIESIDE, Hil. T. 1833 N. B. R.

3. **Irregularity**—LATENESS IN APPLICATION.]—Where the proceedings of commissioners appointed to lay out a street under the authority of an Act of Assembly had been filed in a public office, as directed by the Act, in November, 1864, and the parties objecting to the laying out, and whose property had been taken by the commissioners, applied to the Legislature for compensation in the following year:—Held, that it was too late after-

wards in 1865 to apply for a certiorari to bring up the proceedings of the commissioners on the ground of irregularity. REGINA v. FLEWELLING, 6 All. N.B.R. 419.

4. **Quashing for Want of Diligent Prosecution.**]—Defendant was convicted April 11th, 1890, of a breach of the Canada Temperance Act. On the 22nd May following he obtained a writ of certiorari to remove the conviction into the Supreme Court. The return to the writ was made June 16th, 1890, but no further step was taken by defendant until May 14th, 1891, nearly a year, when notice of motion was given to quash the return made by the magistrate. A motion was made before the court at Yarmouth to quash the writ, which was done. On appeal :—Held, that the defendant had been guilty of laches and the writ was rightly quashed. Also, if the magistrate did not make a true return that matter cannot be inquired into on a motion to quash it, but the remedy of the injured party was by action, or by information at the instance of the Attorney-General. REGINA v. NICHOLS, 24 N. S. R. 151.

5. **Right to Certiorari.**]—Counsel, arguendo, an affidavit for an appeal was made which was not perfected. The defence, on technical grounds, was waived by taking steps toward an appeal. It is too late to apply for a certiorari after an apparent acquiescence in the jurisdiction of the court. Per Rigby, J., delivering judgment of the court, there was also a contention that because the defendant appeared at the trial there was a waiver. By the appearance he may have waived the irregularity in the summons, but could not have waived the irregularity in the conviction, which was a subsequent matter. STARR v. HUGHES, 4 R. & G., N.S.R. 84.

6. **Summary Proceedings** — INFORMATION—WAIVER OF DEFECT, BY APPEARANCE.]—Where a summons was issued on an information purporting on its face to be sworn at a particular time and place, when it was afterwards shown that it was not so sworn, and the accused appears and pleads to the charge, the conviction will not be quashed on certiorari since the appearance of the accused in effect gave the magistrate jurisdiction. EX PARTE SONNIER, 2 C. C. C. 121, 34 N. B. R. 84.

7. **Writ Quashed Where There had been Laches**—WAIVER.]—Proceedings having been taken to lay out certain roads under chapter 60, Revised Statutes (3rd series), all the requisites were complied with and the report duly confirmed by the sessions. Eighteen months subsequently, plaintiff, through whose property the road passed, applied by writ of certiorari to the Supreme Court. He had not appeared before the sessions, nor made there any objection to the confirmation of the report :—Held, that having omitted to do so, and the proceedings having been confirmed by a court of competent authority having jurisdiction in the matter, his application should be refused. DOGGETT v. TREMAIN ET AL., 3 N. S. D. 419.

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7. MISCELLANEOUS CASES.

1. **Acquiescence in Conviction**—BAR.]—The acquiescence of the accused in a conviction made by a justice of the peace, in a matter for summary trial, deprives the accused of his remedy by certiorari, even when moved for within the proper time. MEUNIER v. BEAUCHAMP, 5 Q. P. R. 280.

2. **Alien Labor Act**—SCIENTER—OMISSION TO CHARGE—CODE SEC. 889.]—Where the information and conviction in a prosecution under the Alien Labor Act omitted to charge that the offence was done "knowingly," it was held that the defect was fatal as being one of substance and not curable on certiorari under the curative provisions of Code sec. 889. R. v. HAYES, 6 C.C.C. 357, 5 O. L. R. 198.

3. **Ancillary in Habeas Corpus**—WARRANT OF ARREST.]—The object of an ancillary writ of certiorari in matters of habeas corpus is to allow a Judge after full knowledge of the case, to pronounce on the validity of the issuing of a warrant of arrest, and consequently on the validity of the detention. EX PARTE GREENE (No. 2) 7 C. C. C. 389, 22 Q. S. C. 109.

4. **Assessment Brought up by Writ of**—An assessment of a vessel registered in the Port of Halifax and owned by a trader resident at Isaac's Harbor, in the County of Guysboro', was made in the district of Isaac's Harbor for county rates. A rule nisi was made absolute to remove

the assessment, and on a special case the court decided that the vessel was not liable to be so assessed. IN RE EFFIE SWEET, 3 R. & G., N.S.R. 380, 3 C. L. T. 44.

5. Assessment amounting to more than $1.50 per acre made by a commissioner of dyke was brought up by certiorari and quashed. IN RE BISHOP DYKE, 20 N. S. R. (8 R. & G. 65 & 263, 8 C. L. T. 446.

6. **By-Law.**]—Held, following re Bates, 40 U. C. R. 284, that the conviction being for the breach of the by-law the writ of certiorari was not taken away by R. S. O. 1877 c. 74. REGINA v. WASHINGTON, 46 U. C. R. 221.

7. **Commitment by Justice**—SUNDAY—RESISTING PEACE OFFICER.]—A certiorari will not be granted to remove a justice's commitment of an accused person for trial. Semble, that the arrest and commitment of the defendant on a Sunday for resisting a peace officer were legal. REX. v. LEAHY, EX P. GARLAND, 35 N. B. Reps. 509.

Commitment—INFERIOR COURT.]—A commitment by an inferior court after the proceedings before it had been received by certiorari, is invalid. REX v. FOSTER, 7 C. C. C. 46, 5 O. L. R. 624.

9. **Committal for Trial**—DISCHARGE ON BAIL.]—Where a defendant has been committed for trial, but afterwards admitted to bail and discharged from custody, a superior court of law has still power to remove the proceedings on certiorari, but in its discretion it will not do so where there is no reason to apprehend that he will not be fairly tried. REGINA v. ADAMS 8 P. R. 462.

10. **Debtor** — ORDER OF DISCHARGE — WHEN REFUSAL TO ANSWER PROPER QUESTIONS.]—When a debtor who has been examined before a commissioner, on an application for his discharge from custody, refused to answer proper questions put to him, and the commissioner ordered his discharge, the Court granted a certiorari to remove the order. EX PARTE WRIGHT, 20 N. B. R. 509.

11. **Depositions.**]—Quære, as to the power of a Judge in chambers, on an application of a prisoner for his discharge on a bad warrant, to remand him, and in aid of the prosecution to order a certiorari to bring up the depositions, etc. IN RE CARMICHAEL, 10 L. J. 325.

12. **Important Principle** — CITY COURT.]—Where an important principle was involved in a case tried before the city court of St. John, the court granted a certiorari to bring up the proceedings, though the case might have been reviewed before a Judge at Chambers. EX PARTE FOYE, Easter T., 1893.

13. **Insolvent Debtors' Act.**]—A certiorari lies to remove into Supreme Court the proceedings before justices under the Insolvent Debtors' Act. WHITE v. COLEMAN, 4 All. N. B. R. 630.

14. **Inspector Under Canada Temperance Act** — PROCEEDINGS TO REMOVE HIM FROM OFFICE — INVALIDITY OF — 50 VICT., c. 4, s. 141.]—A resolution to remove an Inspector under the Canada Temperance Act recited certain charges against him, and the mover of the resolution stated facts within his knowledge in support of the charges. A motion to postpone the consideration of the resolution until the following day was lost, and on motion, the inspector, who was present, was heard before the council in answer to the charges. No objection was made to the absence of sworn testimony or of notice. The resolution was passed, the mover and seconder voting in the affirmative. The court being of opinion that there was not sufficient cause within 50 Vic., c. 4, s. 141, and that the proceedings were invalid, and were simply for the purpose of turning the inspector out of office, granted a certiorari to remove the resolution. EX PARTE WEYMAN, 32 N. B. R. 380.

15. **Intituling Affidavits** — PROCEEDINGS BEFORE DEPUTY COMMISSIONER OF MINES BROUGHT UP BY CERTIORARI — FILING AFFIDAVITS.]—Proceedings before the Deputy Commissioner of Mines to forfeit certain mining areas were brought up by certiorari. The parties applying for the forfeiture intituled the process below "The Queen v. Tobin":—Held, that the party taking out the writ had a right to use the same title in subsequent proceedings in the Supreme Court. A rule was granted to compel the parties sustaining the forfeiture to file their affidavits on a day previous to the hearing to be named by the court. QUEEN v. TOBIN, 2 R. & G., N. S. R. 305.

16. **Irregularities** — PREJUDICE.]—A certiorari will not be granted on account of irregularities in procedure, if such irregularities have not prevented justice being done. HUOT v. PAQUETTE, 3 Q. P. R. 502.

17. **Liquor License Act of Nova Scotia, 1895, Sec. 117.**]—Under sec. 117 of the Liquor License Act of Nova Scotia, a writ of certiorari cannot issue unless the party applying therefor files an affidavit denying the commission of the offence charged, either by himself or his agents, and the section applies as a condition precedent notwithstanding that the main objection is one that goes to the jurisdiction of the convicting Magistrate. Where a statute lays down rules restricting the issue of writs of certiorari, they should be construed narrowly, and applicants kept to strict observance of them. R. v. BIGELOW, 2 C. C. C. 367, 31 N. S. R. 436.

18. **No Certiorari Should Issue in a Civil Suit Without a Sufficient Affidavit** — INTITULING AFFIDAVIT — SCOPE OF WRIT — APPEAL — BAIL — 3RD R. S. c. 75, s. 24, "THE AWARD OF SUCH JUSTICES SHALL BE FINAL AND CONCLUSIVE," NOT SUFFICIENT TO TAKE AWAY JURISDICTION TO GRANT WRIT OF.]—No certiorari should issue in a civil suit without an affidavit showing sufficient grounds therefor in the estimation of the court or Judge who grants it, and which may be controverted on other affidavits on motion to set aside the certiorari. The affidavits for the writ should not be intituled in the cause. The affidavits, after the cause is brought up, must be so intituled. The writ of certiorari has a wider scope in this country than in England, and is often issued after judgment, and for small sums but should not be issued when the statutable right of appeal has not been lost or defeated. It is not so restricted in this country as not to remove any other than judicial acts. Sufficient bail must be given to respond the judgment to be finally given in the cause ; and if the Commissioner has any doubt as to the sufficiency of the bail, he should require them to justify. The concluding clause of section 24, chapter 75, 3rd R. S. does not take away the jurisdiction of this court. Burnaby et al. v. Gardiner et al., James 306 affirmed. CRAWLEY v. ANDERSON, 1 N. S. D. 385, 3 R. & C., N. S. R. 37.

19. **Order for Writ Granted by Judge** — INDORSED BY COMMISSIONER AS DIRECTED IN ORDER — ORDER IRREGULAR.] —Certiorari quashed when the order was granted by a Judge and the writ indorsed by a Commissioner who was directed in the order to enforce upon the writ the amount for which bail was filed, etc., the court holding that the Judge had no power to order a Commissioner to indorse the writ. DENNISON v. JACK, 2 R. & G., N. S. R. 172, 1 C. L. T. 663.

20. **Proceedings of Trustees of Schools.**] —The Supreme Court has power to grant a certiorari to remove the proceedings of Trustees of schools under the Parish School Act, 15 Vict., cap. 40, and to quash them if defective. EX PARTE JOCELYN, 2 All. N. B. R. 637.

21. **Profane Language** — CONVICTION FOR USING — MUST SET OUT WORDS USED — COSTS AGAINST INFORMANT ON QUASHING.]—Held, that a conviction for using profane language on the public street should set out the words used. Where the informant and magistrate opposed the application for certiorari and the conviction is quashed, the accused is entitled to costs against them. R. v. SMITH, 2 C. C. C. 485, 31 N. S. R. 468.

22. **Recorder's Court** — WRIT TO RECORDER PERSONALLY — OBJECTION.]— A writ of certiorari against the decision of one of the recorders for the city and district of Montreal, may be directed to the recorder personally and not necessarily to the court, and if objection to its being so directed could be taken at all, it could only be taken by the recorder himself and not by the party in whose favor the judgment complained of was given. POIRIER v. WEIR, 7 Q. P. R. 69.

23. **Sessions.**]—It is improper to call on the court of general sessions to shew cause to a rule for a certiorari. RE NASH AND MCCRACKEN, 33 U. C. R. 181.

24. **Sessions** — RECOGNIZANCE TO APPEAR.]—Held, that a recognizance to appear for trial on a charge of perjury at the sessions was wrong as the court had no jurisdiction in perjury, but a certiorari to remove it was refused, as the time for the appearance of the party had gone by. REGINA v. CURRIE, 31 U. C. R. 582.

25. **Sessions** — JURISDICTION OF JUSTICES.]—Defendant was convicted under 8 Vict., c. 45, for working on Sunday at his ordinary calling. 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, 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. HESPELER v. SHAW, 16 U. C. R. 104.

Sessions.]—The proper proceeding to reverse a judgment of the court of quarter sessions on an indictment is a writ of error, not certiorari and habeas corpus. REGINA v. POWELL, 21 U. C. R. 215.

26. **Sessions** — REASONABLE DOUBT.] Where it is shown to a Judge in Chambers that there is a reasonable doubt as to the legality of a conviction under the Master and Servant Act, he will order a certificate for the removal of the conviction, notwithstanding the confirmation of it by the sessions on appeal. In RE SULLIVAN, 8 L. J. 276.

27. **Sessions** — DISTRICT RATES.]—A certiorari to remove orders of sessions relating to the expenditure of the district rates and assessments, at the instance of the attorney-general, without notice. REX v. JUSTICES OF NEWCASTLE, Dra. O. R. 114.

28. **Set Aside When Sufficient Grounds not Disclosed for Issue of** — STATUTES RESTRAINING WRIT — 4TH R. S., c. 21, s. 67.]—The Act of Incorporation of the Town of New Glasgow, in section 46 provided that the corporation should assess, collect, and pay over whatever moneys were required for poor-rates, and all other (except school) rates, and should have within the town all the powers relating thereto vested in the sessions, grand jury, town meeting, etc. The 52nd section empowered the town council to make by-laws and rules touching all matters within their authority, including rules for regulating the mode of assessment and levying the same, which by-laws, when approved by the Governor-in-Council, should have the force of laws. The by-laws so made defined personal property for the purposes of assessment, so as to comprehend all goods and chattels, and provided for the trial of appeals from the assessment. They contained a further provision, that the roll, when finally passed, should be valid, and bind all parties concerned, notwithstanding any defect or error committed in or in regard to it. The Bank of Nova Scotia, doing business at New Glasgow through a branch, appealed from its assessment, and the appeal having been heard in the mode provided by the by-laws, the assessment was confirmed, and a warrant issued, in pursuance of which a levy was made on books of account of the bank, and on a number of promissory notes, the property of the bank. The bank having thereupon brought the assessment and warrant up by certiorari.:—Held, that sec. 67, of c. 21, R. S., did not apply to the case, being confined eo nomine to proceedings of the sessions touching rates, that the levy on promissory notes was good, that the provision of the by-laws making the assessment final and binding, notwithstanding defects or errors, did not prevent the court from reviewing it under writ of certiorari, and that the certiorari would lie in such case if the affidavit disclosed sufficient grounds, the scope of the writ being wider here than in England. The Court, after ruling as above, quashed the certiorari, without costs, sufficient grounds not having been shown for setting aside the assessment. In RE ASSESSMENT OF THE BANK OF NOVA SCOTIA, BY THE TOWN OF NEW GLASGOW, 3 R. & C., N. S. R. 32.

29. **To Whom Directed.**]—On motion to quash a conviction by a justice of the peace which had been appealed to the county 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 Judge or magistrate, was overruled. REGINA v. FRAWLEY, 45 U. C. R. 227.

30. **Vacation.**]—The certiorari to bring up the depositions cannot properly be issued in vacation, returnable before a Judge in Chambers. In RE BURLEY, 1 C. L. J. 34.

31. **Validity and Committal and Recognizance** — PROPER REMEDY.]—Where the commitment and recognizance taken on Sunday are sought to be attacked, the proper remedy is habeas corpus not certiorari. EX PARTE GARLAND, 8 C. C. C. 385, 35 N. B. R. 509.

VIII. SERVICE.

1. **Petition for** — SERVICE.]—A petition for a writ of certiorari must be served on the parties interested, and a notice of its presentation must be given to them. REX v. WARREN, Q. R. 25 S. C. 31.

2. **Removal of Proceedings in Laying out a Road Under the Highways Act (Consol. Stat. c. 68)** — AGAINST WHOM RULE SHOULD BE TAKEN OUT — SERVICE OF RULE — DELAY IN APPLYING.]—A rule nisi for a certiorari to remove a return made by the Commissioners of Highways (Consol. Stat. c. 68, s. 2), of the laying out of a road, must be moved against, and served upon the Commissioners, and not upon the municipality of the county. The rule should also be served upon the applicant of the road. The court refused to allow such a rule, taken out against the municipality, to be amended and enlarged. EX PARTE HAMILTON, 28 N. B. R. 135.

3. **Short Service** — ENLARGING RULE. —Where an order nisi for a certiorari had been issued only four days before the first day of the term at which it was returnable, the court refused to make the rule absolute and enlarged it until the next term. EX PARTE LYONS, 6 All. N. B. R. 409.

4. **Service** — REASONABLE NOTICE — CONVICTION IN ABSENCE OF DEFENDANT — CODE SEC. 853.]—Where the magistrate convicted defendant of a third infraction of the Canada Temperance Act, in the absence of the defendant, on proof that the summons had been left with defendant's wife at his residence the day previous :—Held, the conviction was bad ; that proof of hour of service and distance from place of sitting of the court, were material elements to decide the question of reasonableness of the notice as required by Code sec. 853. RE O'BRIEN, 10 C. C. C. 142.

5. **Service on Solicitor.**]—W., a solicitor, was not regularly retained by the prosecutor to oppose a motion for certiorari, but was present and was permitted to act. Notice of appeal was served on W.:—Held, the prosecutor having availed himself, of, and got the benefit of W.'s services, and there being no solicitor on the record, could not complain of undue service. Semble, it would be otherwise were the appeal by the defendant after conviction. REGINA v. FERGUSON, 26 N. S. R. 154.

6. **Service on Clerk** — CONTEMPT OF COURT — MAGISTRATE.]—Where a magistrate authorized the enforcement of a summary conviction after a certiorari had been served upon the clerk of the peace, but not upon the magistrate, to remove the conviction into the High Court of Justice, the magistrate will not be adjudged guilty of contempt of court where there is no positive evidence of the certiorari having come to his knowledge. REGINA v. WOODYATT, 3 C. C. C. 275, 27 O. R. 113.

See also CONVICTION ; HABEAS CORPUS ; INDICTMENT ; INTOXICATING LIQUORS — JUSTICE OF THE PEACE — VAGRANCY — WARRANT OF COMMITMENT.

CHALLENGE OF JURY.

See JURY.

CHAMPERTY.

1 **Quebec** — ENGLISH CRIMINAL LAW — CRIMINAL OFFENCE]—The Quebec Act of 1774, introduced English Criminal Law into the Province of Quebec. Champerty by the law of England is a criminal offence, and as such would be a criminal offence in Quebec. MELOCHE v. DE GUIRE, 8 C. C. C. 89, 34 Can. S. C. R. 24.

CHILD STEALING.

Crim. Code Sec. 284 — FATHER STEALING HIS CHILD — DIVORCE]—The mother of a child having secured a divorce from her husband by the decree of a court of competent jurisdiction and the custody of the child having been granted to her, the father stealing the child and taking the same out of the jurisdiction though by the decree of divorce he was allowed to take the child out riding with him in the day time, but to return it to the mother the same day, may be charged with child stealing under sec. 284 of the Criminal Code, his act being more than a mere contempt of court. REX v. WATTS, 5 C. C. C. 246, 3 O. L. R. 368.

See also KIDNAPPING.

CHINESE IMMIGRATION ACT.

1. **Chinamen in Transit Through Canada** — CHANGE OF DESTINATION]—Where a transportation company has engaged to carry a Chinaman in transit through Canada under the bonding regulations of the Chinese Immigration Act from one port out of Canada to another part or place out of Canada, such Chinaman cannot change his destination whilst in transit through Canada RE WING TOY, 7 C. C. C. 551.

See also DEPORTATION.

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CHRISTIAN SCIENCE.

Manslaughter — EVIDENCE — PARENT AND CHILD]—Upon an indictment for manslaughter against a parent for omitting to provide his child with necessary medical treatment, etc., thereby causing the death of the child, the evidence of cures performed in Christian Science as showing the good faith or honest belief of the accused, should be excluded from the jury's consideration. Strictly such evidence should not be received at all. REX v. LEWIS, 5 C. C. C. 261, 6 Ont. L. R. 132, 23 Occ. N. 257.

See also MANSLAUGHTER.

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COINAGE.

1 **Foreign Coin.**]—Section 18 of C. S. C., c. 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 a half-dollar struck by and current in the United States, though not current by law in this Province, and that the defendants had in their possesion counterfeited coin, each piece resembling a piece of the current silver 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. REGINA v. TIERNEY, 29 U. C. R. 181.

2 **Genuine Notes** — BELIEVED TO BE COUNTERFEITED]—A person indicted for offering to purchase counterfeit tokens of value cannot be convicted on evidence showing that the notes which he offered to purchase were not counterfeit, but genuine notes unsigned, though he believed them to be counterfeit, and offered to purchase under such belief. REGINA v. ATTWOOD, 20 O. R. 574.

See also COUNTERFEITING.

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COMMITMENT.

1. **Amendment of Conviction.**]—REGINA v. WILLIAMS, 8 Man. L. R. 342 ; REGINA v. HERRELL, 12 Man. L. R. 198.

2. **Conditions of Discharge** — NO AUTHORITY FOR, IN STATUTE.]—A warrant of commitment which authorizes imprisonment in default of payment of the fines and costs, including costs and charges for conveying the prisoners to gaol, which latter is not provided for in the statute authorizing imprisonment, is illegal and bad as exceeding the provisions of the empowering statute and should be quashed. EX PARTE LON KAI LONG, 1 C. C. C. 120.

3. **Costs of, and of Conveying to Gaol.**]—In a warrant of Commitment for the non-payment of a penalty, the costs of commitment and conveying to gaol, must be ascertained and set forth. REGINA v. MURDOCK, 4 C. C. C. 82, 27 A. R. 443.

4. **Defect on Face of** — APPLICATION OF SEC. 800.]—Where a defect appears in the face of the commitment, section 800 of the Criminal Code may be invoked, even

where the conviction recited in it differs from the conviction itself, where the conviction is a good and valid one. R. v. GIBSON, 2 C.C.C. 306, 29 O. R. 660.

5. **Escape** — NEW CONVICTION — WARDEN'S AUTHORITY WITHOUT CERTIFICATE.] —A statute provided that "The warden shall receive into the penetentiary 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. A statute provided that "Every one who escapes from imprisonment shall, on being re-taken, 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.

6. **Formal Variances.**]—A commitment must agree substantially with the conviction. Formal variances are not fatal. REGINA v. BRYANT, 3 Man. L. R. 1.

7. **Habeas Corpus** — SECOND COMMITMENT.]—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. L. R. 58.

8. **Must Show Jurisdiction.**]—A warrant of commitment which recites a conviction, must show 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 show that the prisoner had so pleaded :—Held, that the conviction ought to be quashed. REGINA v. COLLINS, 5 Man. L. R. 136.

9. **Must Show Jurisdiction.**]—A warrant of commitment signed by an Indian agent, under the provisions of the Indian Act, must clearly show that the agent had jurisdiction at the place where the offence was committed, and although by sec. 8 of cap 32 of 57-8 Vic. (D), substituted for sec. 117, of Indian Act, the agent would have jurisdiction all over Manitoba, there is no ground for assuming that the offence was committed in Manitoba when no place is specified. Such a warrant could only be supported under sec. 108, s.-sec. 2, of the Indian Act, or sec. 886 or 889 of the Crim. Code, 1892, or amended if a proper conviction were shown. The prisoner was in custody under a warrant defective in this respect, and offered some evidence to show that the conviction was equally defective :—Held, that a habeas corpus would be issued to enable him to apply for his release. REGINA v. KENNEDY, 10 Man. L. R. 338.

10. **Second Summons on Original Information** — AFTER CONVICTION QUASHED — RETURN OF INFORMATION TO JUSTICES — JUSTICE OF THE PEACE.)—The conviction of defendant by a justice of the peace, under sec. 174 of the Liquor License Act of Manitoba, having, together with the information on which it was based, been removed into this court by certiorari, was quashed on the grounds that the original summons had not been personally served on defendant, and that she had authorized any person to appear for her on its return. At the same time the Judge who quashed the coviction relying on sec. 895 of the Crim. Code, 1892, ordered that the information should be returned to the Justice, who issued a second summons upon it, it being too late for the prosecutor to lay a second information in respect to the offence charged ;—Held, on motion for prohibition, that there was no authority for the return of the information to the convicting justice after the quashing of the conviction, as the sec. of the Crim. Code referred to only applies in cases where before that section a procedendo would have been issued to send back a

record; that the information was, therefore, not properly before the justice when he issued the second summons thereon, and that he had no jurisdiction to proceed upon it. Review of cases in which a record filed in a superior court upon a certiorari may be sent back to the inferior court by a procedendo. Appeal from judgment on Bain, J., refusing prohibition, allowed, and prohibition granted without costs. REGINA V. ZICKRICK, 11 Man. L. R. 452.

11. **Warrant.**]—Under 31 & 32 Vict., c. 30, one justice may sign a warrant of commitment. A warrant may be partly written and partly printed. A warrant was addressed to the keeper of the common gaol at the City of Winnipeg, instead of to the keeper of the common gaol of the Eastern Judicial District:—Held, sufficient. The commitment stated the offence as follows: "On or about the 14th day of May, 1886, did embezzle the sum of $104, being the property of the Dominion Express Company":—Held, insufficient. REGINA V. HOLDEN, 3 Man. L. R. 579.

12. **Warrant.**]—A warrant of commitment must direct the gaoler to receive and retain the prisoner, otherwise it will be quashed. REGINA V. BARNES, 4 Man. L. R. 448.

13. **Warrant of** — INVALIDITY WHERE DISCLOSES NO LEGAL OFFENCE — JURISDICTION.]—A warrant of commitment must disclose a legal offence on which accused could be committed for trial. Where justices designated themselves as "in and for the County of Labelle," when in fact no such title existed, held insufficient. The question of want of jurisdiction is one to be shown by prisoner. EX PARTE WELSH, 2 C. C. C. 35.

14. **Warrant** — CONVICTION IN PLACE OF — CRIMINAL CODE 752.]—Where a person had been committed and a conviction lodged with the gaoler as the warrant for his detention, it was held on appeal, that the power of the Judge in detaining the prisoner under criminal Code 752 until a formal warrant of commitment be lodged, was properly exercised. REX V. MORGAN, 5 C. C. C. 272, 2 O. R. 413, 3 O. R. 356.

See also CERTIORARI; CONVICTION; COSTS; HABEAS CORPUS; WARRANT OF COMMITMENT.

COMITY OF NATIONS.

1. **Doctrine of** — IN RELATION TO FOREIGN COUNTRIES.]—A foreign company is bound by the lex loci, and although entitled to carry on business outside of the country of its incorporation if not prohibited by its charter, it is always subject to the restrictions and laws enforced in the country where it establishes itself. REGINA V. HOLLAND, 4 C. C. C. 72, 7 B. C. R. 281.

See also EXTRADITION.

COMMON ASSAULT.

1. **Conviction for** — ON TRIAL FOR FELONY.] — L. was tried on an indictment under 32 & 33 Vict., c. 20, containing four counts. The first charged that he did unlawfully, etc., kick, strike, wound, and do grievous bodily harm to W., with intent, etc., to maim; the second charged the assault as in first with intent to disfigure; the third charged the intent to disable; the fourth charged the intent to do some grievous bodily harm. The prisoner was found guilty of a common assault:—Held, that L. was rightly convicted, section 51 of the Act 32 & 33 Vict., c. 20, authorizing such conviction. REGINA V. LACKEY, 1 P. & B., N. B. R. 194.

2. **Conviction for, Upon Charge of Causing Grievous Bodily Harm.**]—Where a defendant was tried summarily by consent on the charge of causing grievous bodily harm, it is competent to convict of common assault, but such is not "on summary conviction" within the meaning of section 265, and the defendant is liable to one year's imprisonment or to a fine not exceeding one hundred hollars, as if convicted before a jury. REX V. JAMES COOLEN, 7 C. C. C. 522, 36 N. S. R. 510.

See also ASSAULT; CONVICTION; SUMMARY TRIAL.

COMMON GAMING HOUSE.

1. **Black Jack, Game of Chance** — EVIDENCE.]—The game of "Black Jack" is a game of chance in which the dealer is the one against whom the other players

stake, play or bet, and as against the players the chances are in favor of the dealer. A room or building in which Black Jack is played is a common gaming house, even though there is no evidence of the defendant keeping the room or house for gain. THE QUEEN v. PETRIE, 3 C. C. C. p. 439, 7 B. C. R. 176.

2. **Evidence of Room Kept for Gain.**]—Where a defendant was in the habit of inviting his friends to his private apartments once or twice a week and engaged with them in a game of poker for money stakes, and there was no evidence of any gain to the defendant beyond the fact that the defendant with the consent of the players—not as a matter of right nor as a condition of anyone being admitted to the game—was allowed from time to time to take small sums from the stakes to pay the cost of refreshments, the defendant putting up his own stakes and the chances of the game being alike favorable to all, it was held that there was not sufficient evidence to show that the defendant's apartments were kept for gain so as to render him guilty of keeping a common gaming house. REGINA v. SAUNDERS, 3 C. C. C. 495.

3. **Evidence of Gain** — MIS-DIRECTION.]—Where the manager of a cigar shop had a rear room, where persons resorted to play poker, and received a small "rake-off" out of the stakes to cover the cigars and refreshments consumed by the players, and instructions to the jury that if the "rake-off" was not more than reasonably sufficient to pay the proprietor for the cigars and refreshments furnished, the defendant would not be liable, is a misdirection, the question for the jury being, whether the place was kept for gain, and they could properly be told that the increased profits of the business derived from the sale of the defendant's goods to the persons resorting to his room for play, was some evidence of keeping it for gain. REX v. JAMES, 7 C. C. C. 196, 6 O. L. R. 37.

4. **Newspaper Encouraging Betting on Horse-Racing.**]—A defendant opening or using the office room or other place where a paper is published for the purpose of facilitating or encouraging or assisting in the taking of bets upon horse races, and in consequent issues announcing the betting upon or announcing or displaying the results of the horse races in the news column, is guilty within section 197 (d) of keeping a common betting house. REX v. SMALLPIECE, 7 C. C. C. 556.

See also GAMING.—

COMMON LAW.

1. **Criminal Code** — REPUGNANCY TO COMMON LAW.]—The common law jurisdiction as to crime is still operative notwithstanding the Code, and even in cases provided for by the Code unless there is such repugnancy as to give prevalence to the latter law. REX v. COLE, 5 C. C. C. 330, 3 O. R. 389.

2. **Criminal Liability of Corporations Under, Not Extended by Code.**]—Sections 213 and 220 of the Criminal Code merely embody what were well recognized principles of the common law, and these sections do not extend the criminal responsibility of corporations beyond what it was before they were passed. REGINA v GREAT WEST LAUNDRY CO., 3 C. C. C. 514, 13 Man. L. R. 66, 20 Occ. N. 217.

3. **Extent of Repeal by the Code.**]—Parliament never intended to repeal the common law, except in so far as the code either expressedly or by implication repeals it. So that if the facts stated in an indictment constituted an indictable offence at common law, and the offence is not dealt with in the Code, then unquestionably an indictment will lie at common law. REGINA v. UNION COLLIERY COMPANY, 4 C. C. C. 400, 31 S. C. R. 81.

4. **Offer of Money to Give Evidence** — OFFENCE AT COMMON LAW.]—It is a misdemeanour at common law to incite a witness to give particular evidence when the inciter does not know whether it is true or false, and it is not necessary to prove that the evidence was in fact given or was actually false to the knowledge of the witness. REX v. COLE, 5 C. C. C. 330, 3 O. R. 389.

5. **Power to Summon Several Grand Juries.**]—There is at common law, apart from any statutory authority, inherent power in the court to order one or more Grand Juries to be summoned. REGINA v. MCGUIRE, 4 C. C. C. 12, 34 N. B. R. 430.

COMPLAINANT.

1. **Effect of Death of** — QUASHING CONVICTION — FAILURE TO SERVE.]—The death of the complainant before service of the order nisi to quash a conviction could be affected on him, does not put an end to the proceedings. He is not a party to the record although his name appears, and in certain events he may be made liable for costs. REGINA v. FITZGERALD, 1 C. C. C. 420, 29 O. R. 203.

See also PRIVATE PROSECUTOR.

COMPOUNDING FELONY.

1. **Agreement to Stifle Prosecution** — EXPRESS TRUST — MISAPPROPRIATION.] A covenant given for the express purpose of stifling a prosecution for certain statutory offences, is not enforceable as being illegal and void, in the absence of statutory provision to the contrary. 20 & 21 Vict. c. 54 (Imperial), sec. 12, applies to trustees who had been guilty of misappropriation of property held upon express trusts; though it provides that the civil remedies of a cestui qui trust who had been defrauded should not be interfered with by the statute, and he could accept securities for the restoration of the trust funds, yet it did not authorize an express agreement to forbear criminal prosecution; it counts moreover only agreements given by the defaulting trustee and not those given by third parties under no civil liability to the cestui qui trust, for the avowed object of suppressing criminal prosecution. MAJOR v. MCCRANEY, 2 C. C. C. 547, 29 S. C. R. 182.

2. **Trial had in Other County Than One in Which Offence Committed.**]—Prisoner was tried at Amherst upon an indictment containing two counts, one for robbery and the other for receiving stolen goods. Both offences were proved to have been committed at Truro, and the jury found a general verdict of guilty on both counts:—Held, that the prisoner should have been proceeded against only on the count for receiving, and that, although he might be guilty of both offences, as the robbery was committed in another county than the one in which the prisoner was tried, he must be discharged. QUEEN v. RUSSELL, 3 R. & C., N. S. R. 254.

3. **Construction of Statute** — 20 & 21 VICT., c. 54, s. 12 (IMP.)—APPLICATION — CRIMINAL PROSECUTION — EMBEZZLEMENT OF TRUST FUNDS — SUSPENSION OF CIVIL REMEDY — STIFLING PROSECUTION — PARTNERSHIP.]—The Imperial Act 20 & 21 Vict., c. 54, s. 12, provides that "Nothing in this Act contained, nor any proceeding conviction or judgment to be had or taken thereon against any person under this Act, shall prevent, lessen or impeach any remedy at law or in equity, which any party aggrieved by any offence against this Act might have had if this Act had not passed . . . and nothing in this Act contained shall effect or prejudice any agreement entered into, or security given by any trustee, having for its object the restoration or re-payment of any trust property misappropriated.":—Held, affirming the judgment of the Supreme Court of British Columbia (5 B. C. Reps. 561), that the class of trustees referred to in said Act were those guilty of misappropriation of property held under express trusts:—Semble, that the section only covered agreements or securities given by the defaulting trustee himself. Quære, is the said Imperial Act in force in British Columbia? If in force it would not apply to a prosecution for an offence under R. S. C., c. 264 (Larceny Act), s. 58. Action was brought on a covenant given for the purpose of stifling a prosecution for the embezzlement of partnership property under R. S. C., c. 264, s. 58 (not re-enacted in Crim- Code, 1892):—Held, that the alleged criminal act, having been committed before the Code came into force, was not affected by its provisions and the covenant was illegal at common law. Further, the partnership property not having been held on an express trust, the civil remedy was not preserved by the Imperial Act. MAJOR v. MCCRANEY, 29 S. C. R. 182.

CONCEALMENT OF BIRTH.

Temporary Concealment.]—On 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 that 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, more fully set out in the report, 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 been found guilty, the court refused to interfere. REGINA v. PECHE, 30 C. P. 409.

CONCEALMENT OF GOODS.

Defrauding Insurance Company.]—Under sec. 354 of the Crim. Code (1892), which declares that everyone is guilty of an indictable offence who, for any fraudulent purpose, takes, obtains, removes or conceals anything capable of being stolen, the prisoner was convicted on the charge that he had concealed a quantity of his own goods capable of being stolen, for the purpose of defrauding the Insurance Companies which had insured the goods, and leading the companies to believe that the goods had been destroyed by a fire which had previously taken place. In a case reserved for the opinion of the court as to whether such conviction was proper, the Judge at the trial found as a fact that the prisoner had concealed the goods with the intent and purpose of obtaining from the Insurance Companies their value and also keeping the goods for himself, but it did not appear by the case stated whether the prisoner had actually made any claim under the policies or not :—Held, that the prisoner was properly convicted, also that although the goods were his own goods they came within the meaning of the expression "things capable of being stolen." REGINA v. GOLDSTAUB, 10 Man. L. R. 497.

See also FRAUD.

CONFESSION.

1. **Admissibility** — THREAT BY PERSON IN AUTHORITY INDUCING CONFESSION.]—A confession of guilt had been adduced by a false statement in the presence of a person in authortiy (viz. Assistant Post Office Inspector—the charge being one of theft of a post letter from a mail box), to the effect that the accused had been seen stealing the letter :—Held, that whatever justification there might be for a person in authority endeavoring to worm a confession out of a person, there was certainly no justification for such a resort to falsehood ; the statement "you might as well own up, as to have it brought out in a court of justice," made to the accused was equivalent to "If you don't tell us, it will be brought out in a court of justice." Such a threat made by a person in authority renders the confession inadmissible. R. v. MACDONALD, 2 C. C. C. 221.

2. **Authority of** — CONFESSION MADE TO A PERSON IN.]—Held, that an Indian agent in relation to a confession made to him by an Indian on his reserve was a person in authority and that such confession was not admissible unless the Crown proved that it was not made under the inducement of a promise of favor, or by menaces or under terror. THE QUEEN v. PAH-CAH-PAH-NE-CAPI, 4 C. C. C. 93, 17 C. L. T. 306.

3. **Admissibility of.**]—Prisoner made an admission to a peace officer under inducements after her arrest, and a short time after (within an hour) made a similar confession to a Crown officer without such last mentioned officer holding out any inducement :—Held, that the second confession was also inadmissible. R. v. HOPE YOUNG, 10 C. C. C. 466.

4. **Admissibility of** — INDUCED BY PERSON IN AUTHORITY.]—A confession is inadmissible where made by an accused person to the effect that he had stolen money from his employer, where it was induced by the employer, who had threatened him that if he did not confess, he (the employer) would call an officer. R. v. JACKSON, 2 C. C. C. 149.

5. **Admissibility of.**]—The burden is on the Crown to show unmistakeably that no inducement of a promise of favor, or by menaces, or under terror, was made before a confession of guilt to a person in authority will be admitted in evidence REGINA v PAN-CAH-PAH-NE-CAPI, 4 C. C. C. 93, 17 C. L. T. 306.

6. **Statement Operating as Inducement to Confess** — WARNING BEFORE CONFESSION MADE.]—When a statement was made to a prisoner which was susceptible of the interpretation that a threat or inducement to confess was held out, but before the confession was made the warning was given to the prisoner, the confession was held admissible in evidence. REX v. LAI PING, 8 C. C. C. 467, 11 B. C. R. 102.

See also EVIDENCE.

CONSENT.

1 **Jurisdiction.**]—Consent cannot confer jurisdiction in criminal proceedings. R. v. KOMIENSKY, 6 C. C. C. 527.

CONSPIRACY.

1. **Common Design** — DETACHED FACTS — OVERT ACT.]—It is competent for the jury to group the detached facts, and view them as indicating a concerted purpose; it is not necessary to prove that the parties came together and actually agreed on terms to have this common design. The bare consulting of those who merely deliberate, though not agreeing on any concerted purpose, is in itself an overt act. REGINA v. CONNOLLY AND MCGREEVY, 1 C. C. C. 468, 25 O. R. 151.

2. **Defraud** — ADMISSIBILITY OF EVIDENCE — JUDGE COMMENTING ON CHALLENGES OF JURORS — JUDGE'S CHARGE TO JURY — AFFIDAVITS OF JURORS IMPEACHING VERDICT.]—Accused was convicted of having conspired to defraud the C. P. R. Co. by bribing clerks of the Co. for information of the secret audits and the time when such were to be made, and to furnish same to the conductors and thus enable them to be prepared at the time of audit and at other times to be free to retain fares. On motion for a reserved case:—Held, 1. That a remark of the trial Judge to counsel for accused in the presence of the jurors "If you continue to challenge every man who reads the newspapers you will have the most ignorant jurors selected for the trial of this cause," was not a matter of law, but an irregularity which might entail the annulling of the verdict. In order to do so, such an irregularity must be of a nature to unduly prejudice the jury. The remark in question could not do so. 2. That evidence tending to prove that information could be given by one conductor to another of the auditing of his train for a purpose other than that of aiding him to defraud the company, was inadmissible, as not tending in any way to disprove the object of the conspiracy, and was therefore irrelevant. 3. That a remark of the Judge to the effect that "about forty or fifty witnesses have been examined for the purpose of establishing the good character of the accused. It is very strange that it should take forty or fifty witnesses to establish it," is not a question of law, but a matter of irregularity for which a verdict might be impeached. The trial Judge has a right to give his opinion of the evidence to the jury. 4. The fact that a juror has made remarks indicating a bias for or against the accused, will not of itself furnish ground for a new trial, where the verdict does justice, and where there is no reason to suppose the juror's opinion was not derived from the evidence. 5. A new trial should not be ordered in such cases unless it be shewn that the juror was so prejudiced as to be unable to give the accused a fair and impartial trial. 6. When a juror has been challenged for cause and the triers declare him to be indifferent and competent they being the judges of the facts, the finding is conclusive and final from which there is no appeal, even though counsel for accused was not aware at the time of a conversation made by the jurors showing bias. 7. A solemn declaration by two jurors as to irregular agreement between the jurors, that a majority should carry, is not admissible on an application to impeach a verdict on the grounds of public policy. 8. Affidavits as to regularity of the proceedings of the jury were received in evidence. 9. If a juror does not agree with the verdict he must speak to it when pronounced in open court, or for reasons of public policy thereafter hold his peace. R. v. CARLIN, 6 C. C. C. 365, Q. R. 12 K. B. 483.

3. **Defraud** — ADMISSIBILITY OF EVIDENCE — RESERVED CASE — LEAVE TO APPEAL — PREJUDICE OF JURORS — WEIGHT OF EVIDENCE — CODE SEC. 744-747.]—1. It is no ground for an appeal that one of the jurors was not indifferent but was prejudiced against the prisoner, as it is not a question of law, but of fact,

nor that the verdict was the result of an arrangement between the jurors, as this is a question of fact not of law. 2. The Court of Appeal on a motion for leave to appeal refused to entertain as a ground of appeal that the verdict was given in the absence of proof of the existence of a conspiracy, as assuming it to be a question of law, no application was made to the trial Judge, to reserve such question for the opinion of the Court of Appeal. 3. The statement of the trial Judge to the effect that if prisoner's counsel continued to challenge every man who reads the newspapers "we will have the most ignorant jurors selected for the trial of this cause," is not a misdirection sufficient to constitute a ground for appeal. 4. On a charge of conspiracy to defraud the C. P. R. Co. by disclosing secret information as to the time of auditing passenger trains, evidence was properly rejected which was tendered by the defence for the purpose of showing that information given would be passed on by one conductor to another for purposes other than for defrauding the Company, such proof was altogether hypothetic. 5. Where the trial Judge stated to the jury, commenting on the evidence "About forty or fifty witnesses have been examined for the purpose of establishing his good character. It is very strange that it takes forty or fifty witnesses to establish his good character," it was held not to be misdirection. 6. The trial Judge can give his own appreciation of the evidence to the jury which may or may not be accepted by them. Its essential point is, that the whole evidence be submitted to the jury, who must finally decide as to the guilt of the accused. REX v. CARLIN, 6 C. C. C. 507, Q R. 12, K. B. 483.

4. **Defraud** — INDICTMENT — OVERT ACTS — NAME OF PERSON DEFRAUDED — PRELIMINARY PROOF — WITNESS — DISCRETION.]—In an indictment charging a conspiracy to defraud, it is not necessary to set out overt acts done in pursuance of the illegal agreement or conspiracy, nor is it necessary to name the person defrauded or intended to be defrauded. Before the acts of alleged conspirators can be given in evidence, there ought to be some preliminary proof to shew an acting together, but it is not necessary that a conspiracy should first be proved. A party may not introduce general evidence to impeach the character of his own witness, but he may go on with the proof of the issue, although the consequences of so doing may be to discredit the witness. REX v. HUTCHINSON, 11 B. C. R. 24.

5. **Defrauding Municipality.**] — Indictment charging that defendants H., C., and D. were township councillors of East Nissouri, and F. treasurer; and that defendant intending to defraud the council of £300 of the money of said council, falsely, fraudulently, and unlawfully did combine and conspire, unlawfully and fraudulently to obtain and get into their hands, and did then, in pursuance of such conspiracy, and for the unlawful purpose aforesaid, unlawfully meet together, and fraudulently and unlawfully get into their hands £300 of the monies of the said council, then being in the hands of said F. as such treasurer as aforesaid :—Held, bad, on writ of error. HORSEMAN v. REGINA, 16 U. C. R. 543.

6. **Defrauding Railway.**]—It is a crime under s. 394 of the Code to conspire by any fraudulent means to defraud any person, and so a conspiracy to permit persons to travel free on a railway, as alleged in these cases, would be a conspiracy against the railway company. REGINA v. DEFRIES ; REGINA v. TAMBLYN, 25 O. R. 645.

7. **Essence of** — CIVIL WRONG.]—The conspiracy is the essence of the charge, and it is not necessary that any act should be done in pursuance of the unlawful agreement. If a civil wrong only would be inflicted on a third party if the agreement were carried out, it may nevertheless be a criminal conspiracy. REGINA v. DEFRIES, 1 C. C. C. 207, 24 O. R. 645.

8. **Evidence** — WRITINGS OR WORDS OF ONE PARTY.]—Writings or words of one party charged with conspiracy where such implicate others, can be considered in the nature of an act done in furtherance of the common design, and are admissible in evidence not only against the party himself but as proof of an act from which inter alia the jury may infer the conspiracy itself. REGINA v. CONNOLLY AND MCGREEVY, 1 C. C. C. 468, 25 O. R. 151.

9. **Fraud** — EMPLOYEE OF RAILWAY CO. DISCLOSING SECRETS FOR REWARD — CO-CONSPIRATORS UNKNOWN.]—The accused was indicted for having unlawfully

conspired with persons unknown by deceit, falsehood, and other fraudulent means to defraud the C. P. R. and was was found guilty. The C. P. R. had a system of special train audits of passenger tickets to prevent conductors from defrauding the company :—Held, that an indictment for conspiracy to defraud is valid, when it charges that the accused conspired with the persons unknown if the names of the co-conspirators were in fact unknown to the prosecution; an accused person, however, is entitled to know the names of those with whom he is alleged to have conspired, as soon as the prosecution has the information. It is within the discretion of the trial Judge to instruct the jury that a recommendation to mercy was always within their province, when the circumstances in their opinion warranted it. Though in the particular instance the information given or sold by the accused that a certain train would be audited on a certain day had the effect of preventing the railway company from being defrauded at that time and on that train, yet the adoption of the system of special and unexpected audits of trains was to prevent irregularities, not on the train audited but on others and its effectiveness depended entirely on the secrecy as to the time when it should take place ; and since the information communicated by the accused destroyed the object, it amounted to a conspiracy to cause the company financial injury and thereby to defraud it within the meaning of the indictment. R. v. JOHNSTON, 6 C. C. C. 232.

10. **Gist of the Offence** — INDICTMENT OF ONE CONSPIRATOR ONLY.]—The gist of the offence of conspiracy is the bare engagement and association to break the law, and is complete though the conspirators have been unsuccessful in carrying out the fraud. One conspirator may be convicted without joining the others although within the jurisdiction. REGINA v. FRAWLEY, 1 C. C. C. 235, 25 O. R. 431.

11. **Indictment for** — FAILURE TO PROVIDE PROPER MEDICAL CARE — DESCRIPTION OF CHARGE — CODE SEC. 527-611.]—Prisoner with others was charged on a joint indictment for unlawful conspiracy and agreeing together and with each other to deprive Wallace Goodfellow of the necessaries of life, to wit, proper medical care and nursing whereby his death was caused. On this count the jury found the defendants guilty on a reserved case : Held, 1. That the count was bad from vagueness and inaccuracy of the language ; that in case of a conspiracy to do that which it not a crime or a wrong which is not well known as being the subject of a criminal conspiracy, the facts should be set out with such particularity that it may appear whether or not the conspiracy charged is an indictable offence. R. v. GOODFELLOW, 10 C. C. C. 425.

12. **Indictment of One or Two Conspirators.**]—A conspircay to defraud is indictable, even though the conspirators are unsuccessful in carrying out the fraud. One of two conspirators can be tried on an indictment against him alone charging him with conspiring with another to defraud, the other conspirator being known in the country. REGINA v. FRAWLEY, 25 O. R. 431.

13. **Overt Acts** — ACTS OF CONSPIRATORS — SECONDARY EVIDENCE — EXAMINATION IN CIVIL ACTION — PRESENT TO OFFICIAL — FICTITIOUS TENDERS.]—L. C. & Co., a firm of contractors in Quebec, tendered to harbour commissioners for certain work to be done with the approval of the government,sending in three tenders one in their own name, and two in the names of others, with a common mistake as to price of a portion of the work in all three. The defendant McG., whose brother had been admitted to the firm as a partner without the payment of any capital, was both a member of Parliament and of the harbour commission. The three tenders were received and opened by the commissioners, the defendant McG. being present, and were then forwarded to the government at Ottawa, Ontario. The defendant McG. went to Ottawa and succeeded in obtaining from the government engineer particulars of the calculations and results of all the tenders sent in, of which he advised his brother by letters. When the mistake in price was notified by the government engineer to the three tenderers, one tender was withdrawn, one was varied, so as to make it higher than others, and the firm's was allowed to remain as it was with the manifest error, and so became the lowest tender, and was thus accepted. One government engineer was given a situation on the harbour commission, and the chief engineer of the Public Works Department

received a valuable present from the firm. As soon as the contract was executed, promissory notes to an amount of many thousand dollars were signed by the firm and given to the defendant McG., and he also received money from his brother, whose only means of paying were his profits as a partner. On on indictment for conspiracy against McG. and C., a member of the firm :—Held, that there is no unvarying rule that the agreement to conspire must first be established before the particular acts of the individuals implicated are admissible in evidence, and that the letters written by the defendant McG. at Ottawa were overt acts there in furtherance of the common design, and admissable in evidence against all privy to the conspiracy for which they might be prosecuted in this Province, and as the defendant C. was, by his own admission, privy to the large payment after it was made, it was a matter for the jury to say whether he was not throughout a participator in the proceedings : Mulcahy v. The Queen, Ir. R. 1 C. L. 12, followed. 2. The transactions, conversations, and written communications between R. H. McG. (the partner) and his brother, the defendant McG., and the other members of the firm were receivable in evidence in the circumstances of this case. If at first not available against both defendants they became so when the proof had so far advanced and cumulated as to indicate the existence of a common design. 3. Evidence as to the manner in which other contracts were obtained by the firm previous to the date mentioned in the indictment was properly received as introductory to the transaction in question. 4. Letters written by a member of the firm in the name of an employee, and purporting to be signed by him, were also properly in evidence. 5. The report of the government engineer recommending the acceptance of the firm's tender, was also properly in evidence as the object of all that was done was to obtain a report in favour of the firm. 6. Entries in the books of the firm were evidence against the defendant C., and statements prepared therefrom by an accountant were good secondary evidence in the absence of the books withheld by the defendants. Quære, how far they were evidence against the defendant McG., who was not a member of the firm. 7. The examination of the defendant C. in a civil action arising out of these matters, he not having claimed privilege therein, could be used against him in this trial. 8. The evidence of an expert in calculating results on data supplied and proper for an engineer to to work upon,was admissable. 9. Evidence of a present being made to an engineer in charge of the work with the knowledge of one of the defendants was proper to be considered by the jury as casting light on the relations between the firm and that officer. 10. The use of fictitious tenders was a deceit, and if done to evade the results of fair competition for the contract it was "unlawful." REGINA v. CONNOLLY, 25 O. R. 151.

14. **Preventing Person from Working at his Trade** — SUFFICIENCY OF EVIDENCE—REFUSAL TO ADMIT TO TRADE UNION — NOTIFICATION TO EMPLOYER — DISCHARGE OF WORKMAN.]—REX v. DAY, 6 O. W. R. 470., 577.

15. **Proof of Acting in Concert.**]—Upon an indictment for conspiracy to procure by fraud the return of one F. as a member of the Legislative Assembly :—Held, that it was clearly unnecessary to prove that all the defendants or any two of them, actually met together and concerted the proceedings carried out ; it was sufficient if the jury was satisfied from their conduct and from all the circumstances, that they were acting in concert. REGINA v. FELLOWES, 19 U. C. R. 48.

16. **Trade Combination** — R. S. C. ch. 173, SEC. 13, SUB-SEC. 2 — EVIDENCE — CROWN CASE RESERVED — FORM OF CASE — SUFFICIENCY OF INDICTMENT — MOTION TO QUASH — R. S. C. CH. 174, SEC. 259.]—Held, That 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. 2. That the sufficiency of an indictment upon a motion to quash it is not a queston 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. 3. That the defendants, members of a trade union, in con-

spiring to injure a non-unionist workman, B., by depriving him of his employment, were guilty of an indictable misdemeanor, and that what they conspired to do was not for the purpose 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, 16 O. R. 704.

17. **Robbery** — WITHDRAWAL OF CONSPIRATOR — KING'S EVIDENCE.]—The accused was convicted at Dawson, in the Yukon Territory, on an indictment for conspiracy, and it appeared that before the commission of the offence refused to take part in the proposed robbery as it was "too strong for him," but remained willing to share in the result. After the robbery the accused gave information which led to the arrest and conviction of his fellow conspirators. The trial reserved a case for the opinion of the Supreme Court as to whether or not the withdrawal relieved the accused from criminal liability as a party to the robbery, notwithstanding that he remained with a guilty mind, being ready to accept his share of the stolen property and doing nothing to prevent the commission of the crime. Upon hearing counsel for the Crown, no one appearing on behalf of convict, the conviction was affirmed. REX v. HARRIS, 22nd May, 1902. S. C. Can.

18. **Trade Combination** — PREVENTING OR LESSENING COMPETITION — CRIMINAL CODE, S. 520 (D) — "UNDULY"—CONVICTION — EVIDENCE JUSTIFYING — ASSOCIATION OF TRADERS — CONSTITUTION AND BY-LAWS — LIMITATION OF TIME FOR PROSECUTION — CONTINUING OFFENCE — APPEAL FROM CONVICTION — CROSS-APPEAL BY CROWN.]—Defendant was president of the Ontario Coal Association, an organization having as its object the protection of its members against the shipment of coal direct to consumers by producers. Members agreed not to sell coal for less than certain fixed prices, and not to buy or sell with dealers in coal who sold direct to consumers, or who refused to maintain the prices fixed by the association. A claim of 50 cents per ton might be made against any member who made any irregular sales of coal, and the member was to be expelled from the association on refusal to pay the penalty so fixed. A membership list and a non-membership list were published by the association, which was sent to their wholesale friends so they might be on the lookout so as to guard against irregular shipments. There was evidence that coal dealers in Buffalo had refused to sell wholesale to non-members of the association in Ontario. Defendant was convicted under s. 520 (d) of the Criminal Code, which enacts that everyone is guilty of an indictable offence, etc., who conspires, combines, etc., 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. Defendant appealed to the court of Appeal in the manner provided by s. 5 of 52 V., c. 41 ; and the Crown cross-appealed, seeking a conviction upon the other counts —Held, 1. Defendant was rightly convicted. The plain object of the association was to restrict and confine the sale of coal by retail to its own members, and to prevent anyone else from obtaining it for that purpose from the operators and shippers. 2. The objection that the prosecution was too late, and was barred by s. 930 of the Code failed, as the offence was a continuing one (and if applicable to indictable offences it did not apply): Held, the cross-appeal of the Crown should be dismissed, as s. 5 of the Act only applied to an appeal from a conviction. REX v. ELLIOTT, 5 O. W. R. 163, 9 O. L. R. 648, 9 C. C. C. 505.

19. **Trade Union.**]—Held, that 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. C. S., c. 173, s. 13, s.-s. 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. Semble, also, that the indictment in this case was sufficient. REGINA v. GIBSON, 16 O. R. 704.

20. **Venue** — OVERT ACT IN OTHER COUNTIES.]—An indictment for a conspiracy may be tried in any county in

which an overt act has been committed, and if one such overt act be proved, other overt acts either by the same or others of the conspirators, may be given in evidence, although in other counties. REGINA v. CONNOLLY, AND McGREEVY, 1 C. C. C. 468, 25 O. R. 151.

CONSTABLE.

See PEACE OFFICER.

CONSTITUTIONAL LAW.

1. **Agricultural Exhibitions** — PROTECTION AGAINST FRAUD — B. N. A. ACT.]—Provincial legislation imposing a penalty or in default of payment imprisonment, for the fraudulent entry of horses at exhibitions is intra vires. Such legislature is in relation to agriculture on which the Province has concurrent power to legislate. REX v. HORNING, 8 C. C. C. 268, 8 O. L.R. 215.

2. **Bigamy** — CRIM. CODE 275, 276 — JURISDICTION OF PARLIAMENT OF CANADA.]—Secs. 275, 276 of the Criminal Code, constituting the leaving of Canada by a British subject resident therein, with the intent to go through the form of bigamous marriage outside of Canada, an indictable offence are intra vires of the Parliament of Canada. Special cases referred by the Governor-General in Council to the Supreme Court of Canada. 1 C. C. C. 172.

3. **British North America Act** — CONSTITUTION OF GRAND JURY — NUMBER OF PANEL — WHETHER PROVINCIAL LEGISLATURE HAS POWER TO LIMIT NUMBER OF GRAND JURY PANEL.]—It is within the power of the provincial legislature to fix the number of grand jurors, who shall compose the grand jury panel, that being part of the organization and constitution of the court. But the legislature has no power to fix the number of grand jurors necessary to concur in finding a true bill of indictment, as that is a matter of criminal procedure, and exclusively intra vires of the Dominion Parliament. R. v. COX, 2 C. C. C. 207, 31 N. S. R. 311.

4. **British North America Act** — "CRIMINAL LAW" — PROPERTY AND CIVIL RIGHTS.]—An act which constitutes a new crime for the purpose of punishing it in the interests of public morality falls within the criminal law; but an act regulating the dealings and rights of one class with another, with punishments for the protection of one class, falls within property and civil rights, and is intra vires of a Parliament Legislature. REGINA v. HALIFAX ELECTRIC TRAMWAY CO., 1 C. C. C. 424, 30 N. S. R. 469.

5. **By-Law** — DOMINION LEGISLATION — ULTRA VIRES.]—A by-law passed in pursuance of Provincial legislation giving power to make regulations of a merely local character for the prevention of fires and the destruction of property by fire, cannot be said to interfere with the general regulations of trade and commerce which belongs to the Dominion, and do not conflict with the provisions of the Petroleum Inspection Act, 1899. REX v. McGREGOR, 5 C. C. C. 485, 4 O. R. 198.

6. **Civil Remedy** — SUSPENSION OF — CODE SEC. 534.]—Sec. 534 of the Criminal Code is ultra vires as being legislation affecting civil matters and cannot be considered a necessary incident or consequence of the right to legislate upon criminal matters. PAQUET v. LAVOIE, 6 C. C. C. 314.

7. **Concurrent Jurisdiction of Provinces and Dominion** — CONFLICT.]—Provincial legislation on subjects which are within the concurrent jurisdiction of the Province and the Dominion is null when contrary to the legislation of the Federal Parliament EX PARTE ASHLEY, 8 C. C. C. 328.

8. **Extradition Act** — SEC. 5.]—Section 5 of the extradition Act is intra vires of the Parliament of Canada, and does not conflict with the rights conferred on the Provinces as to constitution and organization of courts by sec. 92 of the B. N. A. Act, sub-sec. 14. EX PARTE GAYNOR AND GREENE, 9 C. C. C. 240.

9. **Fisheries** — R. S. C., c. 95, SEC. 14 — ULTRA VIRES — TRAP NETS LICENSE FEE — REVENUE PURPOSE — PROVINCIAL FORESHORE LIMITS.]—1. The Dominion Government though possessed of the power to regulate fishing within Provincial foreshore limits, has no power to levy a license fee therefore, and s.-s. 7, of sec. 14 of Fisheries Act R. S. C., c. 95, is ultra

vires. 2. The Federal Government could levy such a tax for revenue purposes generally, but a special enactment would be required. R. v. CHANDLER, 6 C. C. C. 308.

10. **Instalment Contracts** — LOAN CORPORATION ACT, 1897, R. S. O., c. 205.]—The Loan Corporation Act of Ontario, R. S. O. 1897, c. 205, is intra vires of the Provinical legislature, since its effect is to prohibit the making of such contracts as it deals with under penalties imposed by the Code. R. v. PIERCE, 9 C. C. C. 402, 9 O. R. 374.

11. **Justices of Peace** — SUMMARY JURISDICTION — POWER OF DOMINION PARLIAMENT.]—The Dominion Parilament has jurisdiction to confer a new jurisdiction on Provincial courts. REX v. WIPPER, 5 C. C. C. 17, 34 N. S. R. 202.

12. **Liquor Laws** — TEMPERANCE ACT, 1864 — QUEBEC ACT OF 1870 — SCOTT ACT 1878.]—The Temperance Act of 1864 or "Dunkin Act" was applicable equally to Upper and Lower Canada, and under it municipalities were given power to pass by-laws prohibiting the granting of licenses. By sec. 129 of the B. N. A. Act the Temperance Act was left in force until repealed by the legislature vested with power to do so. The Quebec Act of 1870 abrogated all of the Dunkin Act except the first ten clauses, which give to municipalities the power aforesaid. 1. Held, on an application for habeas corpus that inasmuch as the Temperance Act, 1864, was passed by the legislature representing both Upper and Lower Canada, it was ultra vires of the Quebec Legislature alone to repeal it or any part of it. 2. The fact of such Act having remained in force, however, in the Province of Quebec did not debar the local legislature from enacting a law having for its object the regulating of the liquor traffic within the limits of its territory. EX PARTE O'NEILL, 9 C. C. C. 141.

13. **Liquor License Act** — TERRITORIAL ORDINANCE — INTRA VIRES — CODE SEC. 880.]—Sec. 22 of the Ordinance, c. 22 of 1900, passed by the legislative assembly of the North-West Territories is intra vires, and is not inconsistent with the provisions of Part LVIII. of the Criminal Code; since sec. 22 of said Ordinance merely provides another requisite preliminary to the right of appeal as provided by sec. 880 of the Code. CANANAGH v. MCILMOYLE, 6 C. C. C. 88, 5 Terr. L. R. 235.

14. **North-West Territories** — CONTROL OF CORPORATIONS — STATED CASE.]—Defendants were convicted by a justice for carrying on business as a foreign company without having registered under the Foreign Companies Ordinance, 1903. On a stated case. The defendants were incorporated under the Joint Stock Companies Act R. S. C. 1886, c. 119. It was contended that the local ordinance did not apply to Dominion charters, and if so that it was ultra vires:—Held, 1. That the defendant company was a foreign company within the meaning of the ordinance, since as dealers in implements it carried on "some business to which the legislative authority of the Territories extends." 2. It is ultra vires of legislative Assembly of the Territories to pass such ordinance as being legislation in respect of direct taxation, and this authority may be exercised with respect to corporations created under Act of Dominion Parliament. If some of the provisions are ultra vires it does not in itself make the whole ordinance ultra vires. 3. As incident to such powers the Legislature may impose conditions compelling companies doing business under Dominion Charters to file a copy of this charter with the proper officer in that behalf in the Territories, pay the required fee, and file a power of attorney as set out in said statute. 4. Per Newland, J., the only question as to the right of Provinces to legislate as to property and civil rights, is where such legislation conflicts with Dominion powers (e.g. regulations of trades and commerce). The construction generally put on "regulation of trade and commerce" does not include minute regulations affecting terms and conditions on which corporations carrying on particular trades are to be allowed to do so in particular locations, but rather to matters of general quasi-national importance. R. v. MASSEY HARRIS CO., 9 C. C. C. 25, 1 W. L. R. 45.

15. **Organization of Courts of Criminal Jurisdiction** — DOMINION LEGISLATION.]—The Dominion Parliament may impose new duties on existing Provincial courts as to matters not exclusively assigned to the Provincial Legislatures and no Provincial Legislation is necessary to enable

effect to be given to such enactments. RE VANCINI (No. 2), 8 C. C. C. 228, 34 Can. S. C. R. 621.

16. **Provincial Legislation** — CRIMINAL PROCEDURE.]—A Provincial Legislature has no jurisdiction to give a single Judge authority to determine matters arising under the Criminal Code as to which the Full Court was formerly the proper forum. REGINA v. BEALE, 1 C. C. C. 235, 11 Man. L. R. 448.

17. **Provincial and Dominion Legislation** — POWER OF DOMINION PARLIAMENT TO EXTEND JURISDICTION GIVEN BY PROVINCIAL LEGISLATION.]—The jurisdiction of Parish Court Commissioners is defined by sec. 2, c. 59, Con. Stat. N. B. and by s.-s. 92, B. N. A. Act ; the Provincial Legislatures alone have power to pass legislation defining the jurisdiction of Provincial Courts. Sec. 103 (a) c. 106 Can. Temperance Act which purports to give jurisdiction to the Parish Court Commissioners to try offences under this Act is ultra vires of the Dominion Parliament. EX PARTE FLANAGAN, 5 C. C. C. 82, 14 N. B. R. 577.

18. **Provincial Legislation** — DELEGATION OF POWERS TO DOMINION PARLIAMENT.]—A Provincial statute constituting a court with such jurisdiction as the Parliament may confer is not a delegation of the powers vested in the Province by the B. N. A. Act. EX PARTE VANCINI, 8 C. C. C. 164, 36 N. B. R. 456.

19. **Railways** — SPREADING FIRES — CERTIORARI — FINDINGS OF FACT.]—On application by defendants to quash a conviction under the PrairieFire Ordinance by which the defendants had been convicted of starting a fire near a station on their right of way :—Held, 1. If there is any evidence to satisfy conviction, it is for the justice of the peace to decide as to the weight, in the same manner as a jury, and his finding should not be interfered with unless it clearly appears that there was no evidence before him. 2. That in enacting such ordinance the local legislature has jurisdiction to enact rules of evidence governing the onus of proof. 3. It is intra vires of the Territorial legislature to require engines of a Railway Co. operating under a Dominion charter, to be properly equipped so that the least possible danger from sparks should ensue ; such a power to legislate concerns a matter of a local or private nature, and respects property and civil rights. R. v. C. P. R. Co., 9 C. C. C. 335, 1 W. L. R. 89.

20. **Royal Prerogative** — PARDON — STATUTE.]—The Royal prerogative cannot be affected or curtailed by the enactment of a statute without express words to that effect, but it may be enlarged and extended by a statute which does so in general terms. The prerogative of mercy is simply the exercise of a discretion on the part of the Soveriegn to dispense with or to modify punishments which the criminal or penal law required to be inflicted, but it should not interfere with or infringe private rights. EX PARTE JOHN ARMITAGE, 5 C. C. C. 345, Q. R. 11 K. B. 163.

21. **Seamen's Act, Sec. 104** — INTRA VIRES.]—The Parliament of Canada had power to enact sec. 104 of the Seamen's Act, R. S. C., 1886, c. 74. REX v. MARTIN, 8 C. C. C. 148, 36 N. B. R. 448.

22. **Statute Partly Constitutional** — INTENTION OF LEGISLATURE.]—A statute may be unconstitutional in part only and valid as regards the remainder,but in such a case when the parts are so related in substance as to preclude the supposition that the Legislature would have passed one without the other, or when it appears that the legislature intended the Act to operate as a whole,the entire statute must be adjudged invalid. EX PARTE JOHN ARMITAGE, 5 C. C. C. 345, Q R., 11 K. B. 163.

23. **Suspension of Legislation Pending Vote of Election.**]—Legislation which provides a law but leaves the time and manner of its taking effect to be determined by the vote of the electors is not a delegation of legislative power to them. See REX v. CARLISLE, 7 C. C. C. 470, 6 O. L. R. 718, 23 Occ. N. 321.

24. **Trade and Commerce** — SHOPS REGULATION ACT — INTRA VIRES.]—The Shops Regulation Act (Man.) which merely limits the number of hours during which the shops are to open for business in a particular specified business, and which is restricted to municipalities desiring to avail of its provisions, is a matter

of a merely local nature within sub-sec. 16 of section 92 of the B. N. A. Act and is intra vires of the Provincial legislature. Rex v. Schuster, 8 C. C. C. 354, 14 Man. L. R. 672.

25. **Trade and Commerce.** — Sec. 91, Sub-Sec. 2 B. N. A. Act — Interference with Trade and Commerce.]—Provincial legislation prohibiting Chinamen or persons unable to speak English, from occupying any position of trust or responsibility in a mine is ultra vires. If it affects aliens it is governed by Union Colliery v. Bryden (1889) A. C. 580, and if it affects British subjects it is an interference with trade and commerce. Under sec. 91 sub-sec. 2 of the B. N. A. Act freedom to trade with Canada includes freedom to engage in occupations in Canada for the purpose of earning a livelihood. Rex v. Priest, 8 C. C. C. 265, 10 B. C. R. 436.

CONTEMPT OF COURT.

1. **Newspaper Comment.**]—The public press are entitled to discuss and comment on judicial decisions as matters of public interest, but not to pre-judge matters which are sub judice. Though a technical contempt be committed, no committal ought to be made, unless the offences be of so serious a nature as to render the exercise of this summary power necessary to prevent interference with the cause of justice. Stoddard v. Prentice, 5 C. C. C. 103, 6 B. C. R. 308.

2. **Newspaper Comment** — Code Sec. 14-290.]—On the trial of an indictment for conspiracy to extort money, the jury disagreed and were discharged, and a new jury ordered to be impanelled, the cause is still pending, and it contributes a contempt of court for one of the accused, to publish, in a newspaper controlled by him, improper comments on the case. 2. Contempts of court are direct and indirect; the first, in the presence of the court or so near to it as to interrupt its proceedings; the second is offered elsewhere and tends to impede in pending causes the due administration of justice. 3. To state or insinuate at a public meeting or elsewhere publicly, that the defendant is not guilty, coupled with the affirmative that there was a conspiracy against him, or that he could not get a fair trial, is a gross contempt of court. 4. In a case of direct contempt the Judge may proceed and punish in a summary way instanter; in a case of indirect contempt, the contemnor must be regularly summoned to show cause and unless admitted, proof of the act must be given. 5. The question of whether contempt has been committed is for the sole decision of the Court. 6. In addition to a fine and imprisonment defendant may be bound over to keep the peace in two sureties, and not to commit any further contempt and to give security therefor and in default to be imprisoned for 6 months. Rex v. Charlier, 6 C. C. C. 486.

See also Certiorari.

CONVERSION.

Conversion of Chattel by Finder — Pawning — Criminal Intent — Question for Jury.]—The prisoner was convicted for stealing a watch. The evidence shewed that he found the watch, and a few hours afterwards on the same day pawned it for a small advance. The Judge told the jury that, if the prisoner found the watch, and afterwards disposed of it for his own use, he was guilty of theft; it made no difference whether he discovered the owner or not. He also told them that the raising of a temporary loan on anything found constituted a theft. The following questions were reserved for the opinion of the court :—1. If the prisoner found the goods and afterwards disposed of them to his own use was he guilty of theft? 2. Does the raising of a temporary loan on anything found constitute theft? In answer the Court said: "Not necessarily as a matter of law. Whether or not the conversion by the finder to his own use of goods found by him is a guilty conversion is a question for the jury, upon consideration of all the circumstances . . . . . The direction of the Judge to the jury in this case was equivalent to a direction that as a matter of law the accused was guilty; the finding was therefore rather a finding by the learned Judge than by the jury, and for that reason cannot be upheld." Regina v. Slavin, 21 Occ. N. 54.

CONVICTION.

1. **Absence of Accused** — Failure to Prove Service of Summons — Conviction Invalid.]—The prisoner was charged with being a vagrant and having failed to appear on the return day of the summons, he was convicted without any proof having been made of the service of the summons on him. The conviction was quashed. Rex v. Levesque, 8 C. C. C. 505, 6 Que. P. R. 64.

2. **Adjournment** — Absence of Magistrate — Clerk Adjourning Court — Code Sec. 857.]—Under Part LVIII. of the Code where the magistrate has adjourned a summons and on the adjourned date is himself absent, the Clerk of the Court has no power to adjourn for a longer period than eight days from the time when magistrate granted the first adjournment, as at the expiration of the eight days the magistrate himself is functus officio. Paré v. Recorder, of Montreal, 10 C. C. C. 297.

3. Allegations of Illegal Practice Without Specifying Act — Allegation of Place] — Imposition of Costs. A. B. was convicted of practising as a veterinary surgeon without the proper qualification:— Held, that the conviction was good, although it did not allege any particular act done. A conviction stated the offence to have been committed in the county of Norfolk. The information charged the offence as in the Municipality of North Cypress, in the County of Norfolk, in the Province of Manitoba. In the absence of any affidavit denying that the magistrate had jurisdiction :—Held, that an objection that no offence within the Province had been shown was untenable. Costs unwarranted by statute having been imposed.:—Held, that the conviction was bad. Re Bibby, 6 Man. L. R. 472.

4. **Alien Labour Act** — Written Consent of Judge to Prosecution — Requisites of Consent — Jurisdiction of Magistrate.]—Appeal by defendant from a conviction by a magistrate (acting with the written consent of the junior Judge of the county of Carleton), for unlawfully and knowingly assisting the importation of an alien and foreigner into Canada under contract and agreement made previous to his importation to perform labour and sevices in Canada contrary to 60 & 61 V. c. II. (D), as amended by 61 V. c. 2 (D), and I. Edw. VII. c. 13 (D) : Held, the written consent did not comply with the intention of the statute, as it should contain a general statement of the offence alleged to have been committed, mentioning the name of the person in respect of whom the offence is alleged to have been committed, and the time and place, with sufficient certainty to identify the particular offence intended to be charged. Conviction quashed. Rex v. Breckenridge, 6 O. W. R. 501, 10 O. L. R. 459.

5. **Amendment of** — Construction of Statute — Words of, Contradicted by Words in Schedule — Effect of.] —Consolidated Statutes 32 & 33 Vic. c. 32, gives a competent magistrate summary jurisdiction to try the offences there defined, with the consent of the accused ; such consent to be asked and given as therein set out. Con. Stat., 37 Vic. c. 32, s.1,declares that certain Acts,"The titles of which are set forth in the annexed schedule," among them, 32 & 33 Vic. c. 32, supra, "shall apply to British Columbia." After the mention of the last mentioned Act in the schedule are the words : "In applying this Act to British Columbia, the expression 'competent magistrate' shall be construed as any two justices of the peace, sitting together, as well as any functionary having the powers of two justices of the peace, and the jurisdiction shall be absolute without the consent of the parties charged":—Held, 1. That the 32 & 33 Vic. c. 32 was introduced in its entirety, and that the last mentioned words in the schedule were inoperative as repugnant to it. 2. Justices may amend conviction before return to certiorari in matters of form but not in matters of substance. 3. The court may look at the depositions for the purpose of deciding whether there is any evidence whatever to found jurisdiction to convict. 4. To sustain a conviction for cutting, the skin must be broken. Houghton's Case, 1 B. C. R., pt. I., 1.

6. **Amendment of.**]—A summary conviction describing defendant as "Mrs. Morgan," held bad. Regina v. Morgan, 1. B. C. R., pt. I., 245.

7. **Amendment** — Penalty Possibly Greater.]—Where conviction for ninety days imprisonment instead of three

months' imprisonment as authorized by statute. Conviction quashed as it may possibly be for more than three calendar months, and amendment refused. REGINA v. GAVIN, 1 C. C. C. 59, 30 N. S. R. 162.

8. **Amendment** — EXCESS OF JURISDICTION — COSTS.]—Where a conviction was bad, inasmuch as imprisonment with hard labour was imposed in default of the payment of a fine, and the magistrate in making a return to a rule nisi to quash the conviction, amended the conviction by omitting the imprisonment with hard labor, which part of the conviction was in excess of the magistrate's jurisdiction, it was held that the return was a valid one, and the rule was discharged without costs. REGINA v. MCANN, 3 C. C. C. 110, 4 B. C. R. 587.

9. **Amendment** — UNAUTHORIZED ADDITIONAL PENALTY — DISCRETION OF MAGISTRATE.]—Where a magistrate imposed the full penalty authorized by the statute with an unauthorized addition, the court on certiorari proceedings amended the conviction by striking out the unauthorized addition. In such case the appropriate penalty only was intended and in amending, the court is not exercising the discretion of the magistrate. EX PARTE NUGENT, 1 C. C. C. 126, 33 N. B. R. 22.

10. **Amendment**. POWER OF MAGISTRATE TO AMEND.]—Upon a return to a certiorari, a magistrate has the right to omit an error recorded in the original minute of adjudication. REGINA v. WHIFFEN, 4 C. C. C. 141.

11. **Amendment** — POWER TO AMEND WHERE DEFECTIVE.]—A defective conviction brought up by certiorari, whether in aid of a writ of habeas corpus, or on motion to quash the conviction, can be amended. THE QUEEN v. MURDOCK, 4 C. C. C. 82, 27 A. R. 443.

12. **Amendment of Information** — FAILURE TO RESWEAR — WAIVER — CURATIVE EFFECT OF CODE SEC. 889.]—A magistrate in the presence of the defendant and prosecutor amended an information laid under the Master and Servants Act (Ont.), 1901, without having it re-sworn. The amended information was then read over to the defendant, and it was explained to him that he would be tried on the charge as amended. He raised no objection nor asked for any adjournment, and himself gave evidence :—Held, on motion for certiorari, that the magistrate having the defendant before him, even though brought there improperly, may proceed to try him on the amended information, though not re-sworn, even though the Act under which he is tried, requires information on oath, where the defendant raised no objection or protest at the time :—Held, further, that being satisfied from a perusal of the depositions, that an offence of the nature described in the conviction has been committed by the defendant, and that the magistrate had jurisdiction over it, and the punishment imposed is not in excess of that provided by the law, the court will not invalidate the conviction by reason of the fact that the date and place of the offence are not stated in it, when these clearly appear in the depositions ; the conviction may be cured by amendment under Code secs. 883 and 889. R. v. LEWIS, 6 C. C. C. 499.

13. **Appeal to Judge of Supreme Court, N. W. T.** — NOTICE OF APPEAL — INSUFFICIENCY — TIME OF SITTING OF COURT NOT STATED.]—REX v. BRIMACOMBE (N.W.T.), 2 W. L. R. 53.

14. **Appeal** — STAY OF PROCEEDINGS.] —An appeal against a conviction under the Liquor License Ordinance (N.W.T.) for supplying liquor to an interdicted person, suspends and stays all the consequences of the conviction, and if forfeiture of the license be one of the consequences of the conviction, is it also suspended pending the appeal. SIMINGTON v. COLBORNE, 4 C. C. C. 381, 4 Terr. L. R. 372.

15. **Appeal to County Court** — HABEAS CORPUS PROCEEDINGS.]—Application for a writ of habeas corpus. The prisoner was charged with an offence under s. 523 of the Criminal Code, convicted thereof by the police magistrate for the city of Rossland, and sentenced to two months' hard labour. Immediately after conviction he appealed to a County Court, and Leamy, Co.J., affirmed the conviction :—Held, dismissing the application, that the decision of the County Court in appeal from a summary conviction is final and conclusive, and a Supreme Court Judge has no jurisdiction to interfere by habeas corpus. REX v. BEAMISH, 21 Occ. N. 603, 8 B. C. R. 171.

16. **Appeal from Order Quashing.**]—An appeal to the Court of Appeal from an order of the High Court of Justice quashing a summary conviction under a provincial statute does not lie unless specially provided by statute. REGINA v. CUSHING, 3 C. C. C. 306, 26 A. R. 248.

17. **Appeal to County Court** — HABEAS CORPUS — JURISDICTION.]—Where an appeal from a summary conviction has been taken to the county court and determined, there is no jurisdiction in the Supreme Court to impeach the conviction by habeas corpus proceedings, being precluded by Crim. Code sec. 881. REX v. BEAMISH, 5 C. C. C. 388, 8 B. C. R. 171.

18. **Appeal After Plea of Guilty** — OBJECTION AS TO JURISDICTION NOT TAKEN BELOW.]—Where a conviction has been entered under the summary convictions Act of B. C., any objection that the by-law under which the conviction was made is ultra vires, is not open to be raised on appeal unless raised on the hearing before the magistrate. After a conviction has been entered on a plea of guilty, the court has no power to re-open the hearing on the merits which would be tantamount to allowing defendant to withdraw his plea of guilty, and the case will not be reviewed on appeal for the purpose of revising the punishment imposed, unless the magistrate exercised his discretion improperly and oppressively. R. v. BOMAN, 6 B. C. R. 271, 2 C. C. C. 89.

19. **Appeal** — MAGISTRATE STATING CASE AFTER APPEAL — RES JUDICATA.]—The defendant was convicted before a stipendiary magistrate for violation of certain regulations made under the Fisheries Act, R. S. C. c. 96, s. 17, and an appeal was taken to the county court for the district No. 3, where the conviction was affirmed. No appeal was taken from the judgment in the county court, but the stipendiary magistrate was applied to to state a case for the opinion of the Supreme Court, with the view of questioning the validity of the conviction, which he did :—Held, quashing the case stated, that, with the judgment of the County court standing in the way, the defendant was precluded from asking the stipendiary magistrate to state a case for the purpose of attacking the conviction in the Supreme Court. The judgment in the county court, in the identical case, was binding as between the parties, and upon the stipendiary magistrate, and the matter was therefore res judicata, and one in which the magistrate could not be asked to state a case. REX v. TOWNSHEND, 35 N. S. Reps. 401.

20. **Appeal from** — FAILURE TO SERVE PROSECUTOR.]—A notice of appeal from a summary conviction before two justices of the peace, not personally served on the prosecutor, nor addressed to him, but which was served on one of the justices, who was informed at the time of service that the notice was for the prosecutor, is insufficient, and the appeal was quashed. HOSTETTER v. THOMAS, 5 C. C. C. 10, 4 Terr. L. R. 224.

21. **Appeal from** — DEFECTIVE NOTICE — GAMING.]—A notice of appeal from a conviction for playing in a common gaming house, which stated accused was convicted for "looking on," held defective. Notice of appeal showed the names of appellant, the intent to appeal, the sessions to which the appeal is made, and the nature of the conviction appealed against. R. v. AH YIN, 6 C. C. C. 63.

22. **Appeal** — RECOGNIZANCE — SURETIES — STATUTORY REQUIREMENTS.]—On an appeal, under s. 879, Criminal Code, by several defendants from a summary conviction, the recognizance must be that of two sureties besides the appellant, and the appeal will be quashed if the recognizance be given with only one surety. 2. An appeal not being of 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. REGINA v. JOSEPH, Q. R. 21, S. C. 211.

23. **Appeal** — RECOGNIZANCE — DEFECT IN — COSTS — ORDER — MOTION TO QUASH — GROUNDS — ADDITION OF.]—The court may allow new grounds to be added on shewing cause against an order nisi to quash an order dismissing an appeal from a conviction under the Criminal Code, granted under the rule of court of Michaelmas term, 1899, although the rule requires the grounds to be

stated in the order. A recognizance entered into under s. 880 (c) of the Code is bad if the word "personally" is omitted from the condition to appear and try the appeal and abide the judgment of the court thereupon. And the appellate court, on this objection being raised to the recognizance, has jurisdiction to dismiss the appeal with costs. REX v. WEDDERBURN, Ex. p. Sprague, 36 N. B. Reps. 213.

24. **Appeal** — NOTICE OF — PARTIES TO BE SERVED.]—A notice of appeal from a summary conviction (provincial) served upon the convicting magistrate is not invalid because it is not also addressed to served upon the respondent. It is not a pre-requisite to the right of appeal that the person convicted should have been taken into custody. Quære, whether service of notice of appeal on the respondent's solicitor would not be sufficient in any event. REX v. JORDAN, 22 Occ. N. 219, 9 B. C. R. 33.

25. **Appeal** — CONDITIONS PRECEDENT TO APPEAL.]—Where an appeal from a summary conviction was taken to the county court under the B. C. Summary convictions, the requirements of the Act were held to be unfulfilled, where the recognizance was entered into on the day the Appellate Court sat. REGINA v. KING, 4 C. C. C. 128, 7 B. C. R. 401.

26. **Appeal** — CONDITIONS PRECEDENT TO APPEAL.]—An appeal is not a common law right, and the conditions imposed by the statute must be strictly complied with. Where the recogniance was only given with one surety instead of two sufficient sureties as prescribed, the appeal was quashed. REGINA v. JOSEPH ET AL., 4 C. C. C. 126, Q. R. 21, S. C. 211.

27. **Appeal.**—NOTICE TO COMPLAINANT. FORUM.]—Held, that a notice of appeal neither addressed to nor served upon the prosecutor, but addressed to and served upon one only of two convicting justices of peace, is insufficient, though it appear that when the notice was so served the justice upon whom it was served was verbally informed that it was for the prosecutor. Keohan v. Cook, 1 Terr. L. R. 125,followed. The question, whether a notice of appeal to the Supreme Court of the North-West Territories instead of a Judge thereof was valid, was raised but not decided. HOSTETTER v. THOMAS, 4 TERR. L. R. 224.

28. **Appeal** — PAYMENT OF FINE — SECURITY — MONEY DEPOSIT — RETURN TO APPELLATE COURT.]—A person by paying his fine on a summary conviction loses any right of appeal he might otherwise have had under s. 880 of the Criminal Code. Where on an appeal from a summary conviction an appellant makes a money deposit in lieu of recognizance, the deposit, which includes both the fine and the security for costs of appeal, should be returned by the justice into the appellate court, and in default the appeal cannot be heard. REX v. NEUBERGER, 7 B. C. R. 272.

29. **Appeal** — FAILURE TO RETURN DEPOSIT TO COURT — AFFIDAVIT.]—Before an appeal from a summary conviction before a magistrate can be heard, the deposit of money made to the magistrate in lieu of recognizance must be returned into the court hearing the appeal, before the same can be heard. The deposit with the magistrate is a matter of record, and cannot be proved by affidavit evidence. REGINA v. GRAY, 5 C. C. C. 24.

30. **Appeal** — RIGHT OF — PLEA OF GUILTY.]—A person who has pleaded "guilty" to a charge, and has been summarily convicted, may raise a question of law in an appeal under s. 897 of the Criminal Code, but on such appeal his former plea of "guilty" estops him from calling upon the respondent to prove his guilt. So far as his guilt or innocence is concerned, he is not a "party aggrieved" within the meaning of s. 879 of the Criminal Code. REX v. BROOK, 5 Terr. L. R. 369.

31. **Appeal** — RIGHT TO JURY ON APPEAL.]—In an appeal against a summary conviction to the Court of General Sessions in Ontario, there is no right to demand a trial by jury. REGINA v. MALLOY, 4 C. C. C. 116.

32. **Appeal** — NOTICE OF — AGAINST, SUFFICIENT IF DIRECTED TO CONVICTING JUSTICES.]—Under sections 880 and 881 of the Criminal Code it is not necessary to notify the prosecutor of an appeal against a summary conviction; it is sufficient if the notice be addressed to the convicting justices. REX v. DAVITT, 7 C. C. C. 514.

33. **Appeal from** — PARTIES TO BE SERVED — R. S. B. C. 1897, c. 176, s. 71.]—A notice of appeal from a summary con-

viction (provincial), served upon the convicting magistrate, is not invalid because it is not also addressed to and served upon the respondent. It is not a pre-requisite to the right of appeal that the person convicted should have been taken into custody. Quære, whether service of notice of appeal on respondent's solicitor would not be sufficient in any event. REX v. JORDAN, 9 B. C. R. 33.

34. **Appeal from.**]—A notice of appeal from a conviction for playing in a common gaming house, which describes the offence for which the appellant was convicted as "looking on while another was playing in a common gaming house," is insufficient. REX v. MAH YIN, 9 B. C. R. 319.

35. **Appeal** — CODE S.S. 782, 783 (A), AND 784 — 58 & 59 VIC. (CAN.) C. 40.]—The right of appeal given by s. 782 of the Criminal Code as amended by 58 & 59 Vic. (Can.) c. 40, from convictions by two justices of the peace, under Code s. 783 (a) and (f), is not taken away in British Columbia by Code s. 784, s.-s. 3, as amended by 58 & 59 Vic. (Can.) c. 40. REGINA v. WIRTH, 5 B. C. R. 114.

36. **Appeal** — NOTICE OF.]—A notice of appeal from a summary conviction did not state to the next sittings of the Judge or in any way specify when the appeal was to be heard :—Held, invalid. R. v. BRIMACOMBE, 10 C. C. C. 168.

37. **Appeal** — LIQUOR LICENSE ORDINANCE — APPLICATION BY ATTORNEY-GENERAL TO EXPEDITE HEARING — "COURT TO WHICH SUCH APPEAL IS MADE" — IMPRISONMENT FOR OFFENCE OF ANOTHER PERSON — PRIOR CONVICTION.]—Notice having been given of an appeal from a conviction for an infraction of the Liquor License Ordinance (a consequence of which conviction was a forfeiture of the license of the person convicted), to "the presiding Judge sitting without a jury at the sittings of the Supreme Court for the Judicial District of Western Assiniboia, to be holden at the town of Regina on Tuesday, the 25th day of March, 1902," the Attorney-General applied to a Judge under Ordinance, 1901, c. 33 (amending the Liquor License Ordinance), s. 21, s.-s. 3, to expedite the hearing :—Held, that the appeal was to the Supreme Court for the Judicial District named, generally and not merely to a court coming into existence only on the day mentioned, and that a Judge had jurisdiction to hear the application :—Held, on the hearing of the appeal, that sec. 64, s.-s. 5, of the Liquor License Ordinance was ultra vires, although the effect might be to inflict imprisonment (on non-payment of fine) upon a person who had not personally violated the Ordinance: —Held, also, following Regina v. Black, that forfeiture of license results under sec. 82 from a second or any subsequent offence against sec. 64, notwithstanding the convictions occurred in different licensing years. THE QUEEN v. MCLEOD, 5 Terr. L. R. 245.

38. **Appeal** — DEFECTIVE RECOGNIZANCE — WAIVER BY PAYMENT — CODE SEC. 880.]—Appellant was convicted and fined for neglecting to perform his duties as school trustee. After the conviction he entered into a recognizance to prosecute an appeal. The condition of it omitted the words "and to try such appeal." Held, 1. The Court of General Sessions of the Peace had jurisdiction to hear such appeal. 2. Where the conviction made the fine and costs payable forthwith or in default to be levied of the goods and chattels of defendant, and the defendant paid the fine and costs, feeling he was under compulsion to do so and gave notice of appeal :—Held, that the payment was not a waiver of his right of appeal. 3. Where the Court of General Sessions included in the order quashing the conviction a direction that the magistrate refund the amount of fine and costs, such terms being in the order will be considered surplusage, and will not be held to vitiate the whole order. R. v. TUCKER, 10 C. C. C. 217.

39. **Appeal** — DISMISSAL OF — CERTIFICATE OF TAXATION.]—Where a minute of dismissal had been recorded by the Chairman of the Court of General Sessions of the Peace, dismissing an appeal from a summary conviction, such minute authorizing the clerk of the peace to tax the costs, and no formal order of such dismissal was ever drawn up, there is no warrant or authority for the clerk's certificate of taxation, or for the order of the court at another sitting directing the issue of process for the payment of costs as taxed. BOTHWELL v. BURNSIDE, 4 C. C. C. 450, 31 O. R. 695.

40. **Application for Re-Fund of a Fine and Costs.**]—In a statute providing that

the court may perform a judicial act for the benefit of a party, under given circumstances, the word "may" is imperative. FENSON (APPELLANT) v. THE CITY OF NEW WESTMINSTER (RESPONDENT), 5 B. C. R. 624.

41. **Assault** — VARIANCE OF CONVICTION FROM MINUTE OF ADJUDICATION.]—On habeas corpus proceedings it was held that inasmuch as the conviction and warrant of commitment varied from the minute of adjudication in that they stated, that the defendant should be kept at hard labour, the minute not containing such, the variance was fatal and conviction quashed. EX PARTE CARMICHAEL, 8 C. C. C. 19.

42. **Awarding Fine Against Three Persons.**]—A conviction awarding one fine against three persons jointly for separate acts is bad. GAUL v. TOWNSHIP OF ELLICE, 6 C. C. C. 15, 3 O. R. 438.

43. **Blanks in.**]—A conviction adjudged imprisonment in default of payment of the fine and costs "and charges of conveying her to the common gaol, amounting to the further sum of .... dollars." —Held, invalid, and the prisoner was discharged. REGINA v. BRYANT, 3 Man. L. R. 1.

44. **Certiorari** — SELLING LIQUOR TO INDIANS — VIEW OF PLACE OF SALE :]— Motion for certiorari to remove a conviction for selling an intoxicant to an Indian. The magistrate, after hearing the evidence but before giving his decision, went alone and took a view of the place of sale :— Held, quashing the conviction, that the proceeding was unwarrantable. 2. That s. 108 of the Indian Act, and s. 889 of the Criminal Code do not prevent proceedings by certiorari where the ground of complaint is that something was done contrary to fundamental principles of criminal procedure. IN RE SING KEE, 21 Occ. N. 220, 8 B. C. R. 20.

45. **Certorari** — RIGHT TO — CRIMINAL CODE, s. 887 — FAILURE OF REMEDY BY APPEAL.]—Section 887 of the Criminal Code, which enacts that " no writ of certiorari shall be allowed to remove any conviction or order had or made before any justice of the peace, if the defendant has appealed from such conviction or order to any court to which an appeal from such conviction or order is authorized by law, or shall be allowed to remove any conviction or order made upon such appeal," does not deprive the court of the right to quash a conviction on certiorari, where the convicting justice acted as a partisan in collusion with the prosecutor and without jurisdiction, even though an appeal has been taken which has failed by reason of the refusal of the justice to make the return requied by law ; Landry, J., dissenting. In re Kelly, 27 N. B. Reps. 553, discussed. REX v. DELEGARDE, Ex. p. Cowan, 36 N. B. Reps. 503.

46. **Certiorari** — RECOGNIZANCE — SUFFICIENCY OF JUSTIFICATION — APPEAL. —An affidavit of justification upon a recognizance given pursuant to rule of court passed under s. 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 of court made under sec. s. 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 as being worth the amount over and above all their just debts and liabilities, and over and above all exemptions allowed by law. Regina v. Robinet, 16 P. R. 49, not followed. Where a conviction is attacked on the ground of want of jurisdiction, the mere filing of a recognizance by the defendant on an appeal therefrom does not deprive him of his right to a writ of certiorari. The conviction and all other proceedings relating thereto having been filed by the magistrate under s. 801 of the Criminal Code, in the office of the clerk of the court for the judicial district in which the motion is made, a motion to quash the conviction can be made without the issue of a writ of certiorari. Section 892 of the Criminal Code authorizes the requiring of a recognizance only where the conviction is brought before the Court by a writ of certiorari, and no recognizance is required where such a writ is not necessary or is dispensed with. REGINA v ASHCROFT, 4 Terr. L. R. 119.

47. **Certiorari** — WARRANT OF COMMITMENT — ILLEGALITY — REFUSAL TO QUASH — HABEAS CORPUS.]—When a person is in custody under a warrant of commitment, founded on a good conviction, the court will not quash the commitment on certiorari, even if it is illegal. The proper procedure is by way of habeas corpus. REX v. MELANSON, Ex. p. Bertin, 36 N. B. Reps. 577.

48. **Certiorari** — Motion to Quash Convicton — Practice — Rule of Court Requiring Recognizance with Sufficient Sureties — Necessity for Affidavit of Justification — Jurisdiction.]—The court or a 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, 2 B. C. R. 207.

49. **Certiorari** — Six Days' Notice to Justices Under Geo. II., c. 8, (Imp.), s. 5 — Substituting Good Warrant Before Return of Rule.]—The Statute 13 Geo. 2, c. 8, s. 5, requiring six days' previous notice to convicting Justices of motion for certiorari is in force in this Province. The service upon the justices of a rule nisi for a certiorari returnable more than six days after service thereof will not be treated as a compliance with the statute—following Regina v. Justices of Glamorgan, 5 T. R. 279. The convicting Justices, after service on them of the rule nisi, substituted and brought in on its return a good warrant or commitment in place of that objected to, which was admittedly bad for not following the conviction :—Held, that they were entitled to do so. Re Charles Plunkett 3 B. C. R. 484.

50. **Certiorari** — Selling Liquor to Indians — View by Magistrate Alone — Whether Warranted or Not — Sections 108 of the Indian Act and 889 of the Criminal Code.]—On the trial for selling an intoxicant to an Indian, the magistrate, after hearing the evidence, but before giving his decision, went alone and took a view of the place of sale :—Held, 1. Quashing the conviction, that this proceeding was unwarranted ; 2. That s. 108 of the Indian Act and 889 of the Criminal Code do not prevent proceedings by certiorari where the ground of complaint is that something was done contrary to the fundamental principles of criminal procedure. Re Sing Kee, 8 B. C. R. 20.

51. **Certiorari** — Magistrate's Jurisdiction.]—Under the N. B. Liquor License Act, 1876, a conviction against a person selling without a license is made final and conclusive, and certiorari is in effect taken away, the only question to be considered being the jurisdiction of the magistrate to convict. Ex parte Hebert, 4 C. C. C. 155, 34 N. B. R. 455.

52. **Certiorari** — Misconduct of Magistrate in Making Return — Lapse of Appeal — Code Sec. 887.]—1. Though the general rule is that where an appeal lies that can be prosecuted outside of a certiorari, ordinarily the court will not interfere, but in exceptional cases the court will interfere and grant certiorari, as where the jusitice acted as a partisan and in collusion with the prosecutor. 2. Where a defendant gave notice of appeal from a conviction before a justice, and the latter failed to file the return of the proceedings before him, and the appeal was thereby rendered abortive, certiorari will be granted on the ground that the exceptional circumstances take it out of the principle of the cases deciding that a certiorari will not be granted where an appeal has been given. Ex parte Cowan, 9 C. C. C. 454, 36 N. B. R. 503.

53. **Certiorari** — Code — Excessive Allowance for Mileage — No Ground for Quashing.]—Where more costs are taxed than allowed by tariff under sec. 871 of the Criminal Code and excessive mileage has been allowed constable for serving subpœnas, it does not affect the jurisdiction of the magistrate, and does not constitute a ground for quashing a conviction. Ex parte Rayworth, 2 C. C. C. 230, 34 N. B. R. 74.

54. **Certiorari** — Merits Not Reviewable.]—An adjudication by a tribunal having jurisdiction over the subject matter is, if no defects appear on the face of it, to be taken as conclusive of the facts stated therein, and the Superior Court will not on certiorari quash the conviction on the grounds that any such fact, however essential, has been erroneously found. There is however a marked distinction between the merits of the case, and points collateral to the merits upon which the limit to jurisdiction depends. R. v. Beagan, 6 C. C. C. 55, 36 N. S. R. 206.

55. **Certiorari** — Cancelling Pilot's Certifcate.]—A conviction by the Montreal Harbour Commissioners depriving

a pilot of his certificate can be quashed by certiorari to the Superior Court, and not by appeal to the Court of Queen's Bench, Crown side. ARCAND v. MONTREAL HARBOUR COMMISSIONERS, 4 C. C. C. 491, Q. R. 17, S. C. 497.

56. **Certiorari** — COMMITMENT DEFECTIVE.]—Where a conviction itself is good, the fact that the commitment is bad, does not invalidate the conviction. The commitment is not a judicial but a ministerial act, and is not a proceeding which can be brought up on certiorari. EX PARTE BERTIN, 10 C. C. C. 65.

57. **Certiorari** — HABEAS CORPUS — KEEPER OF BAWDY-HOUSE — PLEADING GUILTY — TRIAL ON THE MERITS.]—The offence of being a keeper of a house of ill-fame is an indictable offence, and it may be tried either before a jury in the ordinary way, or before a police magistrate under the summary trial clauses, or before a justice of the peace under the summary convictions clauses, of the Code. Upon an application to quash a conviction where the prisoner was in custody when the matter came up on certiorari :—Held, that a writ of habeas corpus was necessary. The defendant was convicted by a police magistrate after pleading guilty to a charge that she did "unlawfully appear the keeper of a house of ill-fame," and sentenced to be imprisoned for one year in the Andrew Mercer reformatory :—Held, that the conviction might be treated as having been made under the summary convictions clauses of the Code, although the sentence exceeded the power of the magistrate, and that such conviction might be supported and the sentence amended under those clauses :—Held, also, that when a prisoner charged before a magistrate with appearing the keeper of a house of ill-fame had pleaded guilty to such charge, there was a trial on the merits, and that such person was to be deemed guilty of the offence of keeping a house of ill-fame. REGINA v. SPOONER, 21 Occ. N. 159, 32 O. R. 451.

58. **Commitment** — PAYMENT OF FINE.] —Where a conviction condemned a keeper of a disorderly house to pay the fine to the clerk of the Recorder's Court and the commitment made it payable to the gaoler such variance between the conviction and the commitment is not material and the payment of the fine to the gaoler is justifiable. REGINA v. BOUGIE, 3 C. C. C. 487.

59. **Complaint** — DESCRIPTION OF OFFENCE — UNCERTAINTY — CERTIORARI.] —A conviction obtained upon a complaint which does not give a clear and precise description of the alleged offence or contravention of a statute or by-law will be quashed upon certiorari. CARRIERE v. CITY OF MONTREAL, 5 Q. P. R. 44.

60. **Corporation.**—LIABITILY OF—TO BE PROCEEDED AGAINST SUMMARILY.]—The provisions of the Criminal Code with regard to summary convictions are applicable to corporations, as well as to natural persons in regard to offences created by or coming within the scope of Dominion Legislation. The fact that a portion of the remedy provided for the recovery of the penalty by way of imprisonment in default of sufficient distress, does not affect the application of the statute, as it is not a necessary part of the conviction that it should be applied. Service of summons is proper if made on a corporation in a similar manner as service of notice of an indictment as provided by Code Sec. 637. R. v. TORONTO RAILWAY CO., 2 C. C. C. 471, 26 A. R. 491.

61. **Costs Awarded to Magistrate Personally.**]—A summary conviction for selling liquor to an Indian is bad, where it awards costs to the magistrate personally. REX v. LAW BOW, 7 C. C. C. 468.

62. **Costs of Distress and Conveying to Gaol** — VARIANCE BETWEEN MINUTE AND CONVICTION.]—The costs of distress and 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. REX v. BEAGAN (No. 2), 36 N. S. Reps. 208.

63. **Costs of Distress and Conveyance to Gaol** — OMISSION IN CONVICTION.]—A conviction on a summary proceeding, omitting to state that in default of payment of costs by distress and conveyance to gaol, that defendant be imprisoned, is invalid. Such costs are

not in the discretion of the justice, and are an essential part of the formal conviction. REGINA v. VAN TASSELL, (No. 2), 5 C. C. C. 133, 34 N. S. R. 79.

64. **Costs of Conveying to Gaol not Stated in Amendment.**]—A summary conviction is defective where the costs and charges of conveying the prisoner to gaol are not stated on the face of the conviction, and an amendment ought only to be made where the court or Judge is satisfied from the depositions that if trying the defendant in the first instance, the court or Judge would upon that evidence have convicted. REX v. LAW BOW, 7 C. C. C. 468.

65. **Costs.**]—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. REGINA v. STARKEY, 7, Man L. R. 489.

66. **Defect on Face of** — UNCERTAINTY — TIME.]—Defendant was convicted for refusing "to close a pool room occupied by him after the hour of half-past eight contrary to the by-law of the village of Carman," etc.:—Held, bad for uncertainty in that it did not specify the time of the offence, and the hour of the evening, or morning (according to the application of the by-law) or the time when it was committed (whether before or after the passing of the by-law.) RE FISHER, 9 C. C. C. 451, 1 W. L. R. 455.

67. **Defective Proceedings Under Municipal By-law.**]—To sustain a conviction under a by-law framed under the transient traders clauses of the Ontario Municipal Act, R. S. O., 1897, c. 223, s. 582 (30-33), the information must disclose that the defendant was either a transient trader or occupied premises in the municipality for a temporary period. REGINA v. ROCHE, 4 C. C. C. 64, 32 O. R. 20.

68. **Defective** — POWER TO AMEND.]—The power to amend mistakes or faults in a conviction where such conviction is made under the provisions of a Dominion Act, do not extend or apply to the amendment of a similar mistake or fault where they occur in a conviction made under the provisions of an Ontario Act. REX v. LEE, 4 C. C. C. 416.

69. **Deposition** — PROCEDURE — JURISDICTION.]—Section 590 of the Code which requires that depositions of witnesses taken in summary proceedings shall, at some time before the accused is called on for his defence, be read over and signed by the witness and the justice in the presence of the accused, the witness and justice,has relation only to a matter of procedure and does not effect the jurisdiction of the magistrate to make a conviction. EX PARTE DOHERTY, 3 C. C. C. 310, 32 N. B. R. 479.

70. **Depriving of the Use of Property.** —32-33 Vict. Cap. 21, Sec. 110.—JURISDICTION OF MAGISTRATE.]—The defendant sold to C. amongst other things, a horsepower and belt, part of his stock in trade of a butcher, in which he also sold a half interest to C. The horse-power had been hired from one M., and at the time of the sale, the term of hiring had not expired. At its expiry M. demanded it, and C. claimed that he had purchased it from defendant. The defendant then employed a man to take it out of the premises where it was kept, and deliver it to M., which he did. The defendant was summarily tried before a police magistrate and convicted of an offence against 32-33 Vict. c. 21, sec. 110 D.:—Held, that the conviction was bad, there being no offence against that section, and no jurisdiction in the police magistrate to try summarily and that it was bad also in not showing the time and place of the commission of the offence. Remarks upon the improper use of the criminal law in aid of civil rights. The conviction was quashed, with costs. REGINA v. YOUNG, 5 O. R. 400, Rose.

71. **Dismissal** — COSTS — UNAUTHORIZED ITEMS — 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, considered. THE QUEEN v. LAIRD, 1 Terr. L. R. 179.

72. **"Disorderly House"** — Summary Jurisdiction of Magistrate to Hear Charge of Keeping — Discretion to Hear Charge or Commit.]—A magistrate has absolute jurisdiction, under s. 783, s.-s. (f), and s. 784 of the Criminal Code, to hear and determine in a summary way a charge of keeping a disorderly house. The exercise of the summary jurisdiction is, under those sections, and s. 791, discretionary with the magistrate, and he may commit the accused for trial, and a mandamus will not lie to compel him to hear and determine the charge summarily. The meaning of the term "disorderly house," in s. 783, s.-s. (f), must be taken from its definition in s. 198, and not from the common law. Re Farquhar MacRae, Ex parte John Cook, 4 B.C. R. 18.

73. **Distinguished from Summary Trial in Relation to Amendment.**]—The provisions of the Code respecting amendment of conviction and commitment in cases of summary convictions, do not apply to cases of summary trial. Regina v. Randolph, 4 C. C. C. 165, 32 O. R. 212.

74. **Distress and Imprisonment in Default.**]—A statute permitted punishment by imprisonment or penalty or both. It also provided that where a fine is imposed and is not paid, a warrant of distress may issue, and after a return, if not sufficient goods, the defendant may be committed to gaol. It also provided that no conviction should be quashed for want of form or should be moved by certiorari into any Superior Court. A conviction under this statute directed the payment of a fine, and in default of payment, a distress,and if no goods, then imprisonment.:—Held, that as there was jurisdiction to award distress and imprisonment, the conviction was not bad, although by it the jurisdiction was prematurely exercised—such award at that time was surplusage only. Regina v. Galbraith, 6 Man, L. R. 14.

75. **Duplicity** — Hearing Several Charges Before Entering Conviction on One — Code Sec. 845.]—Where more than one offence is charged in the information, it is the duty of the justice on objection being taken, to amend the information by striking out all but one of the charges. Where this was not done, and evidence was heard on all the charges, and at the close of the case for the prosecution, all but one charge was abandoned, the conviction entered on that one charge is invalid. R. v. Austin, 10 C. C. C. 34, 1 W. L. R. 571.

76. **Error in Legal Presumption on Charge of Theft.**]—If a summary trial for theft, the conviction is based upon the consideration that there was a burden on the defendant to show that he was innocent, such a conviction constitutes an error and there has been a mistrial. Regina v. McCaffrey, 4 C. C. C. 193, 33 N. S. R. 232.

77. **Expenses of Prosecutor.**]—The fine imposed by a conviction included a share of the expenses of bringing the prosecutor as a witness from a distance. Held, that such inclusion vitiated the conviction. Regina v. Adams & Jackson, 5 Man. L. R. 153.

78. **Expositions** — Entry of Horses at Fair — Costs not Stated in Conviction — Amendment on Appeal — R. S. Ont. c. 90, Sec. 4.]—1. R. S. Ont., cap. 90, relative to the fraudulent entry of horses for competition for any stake in a fair, etc., is intra vires of the Provincial Legislature as being a protection for persons making proper entries from unfair competitions ; thus being an Act to regulate the rights of individuals. 2. Where the costs of conveying to gaol are adjudged, the amount of such must be stated in the conviction, but by 2 Edw. VII., c. 12, the court has power to amend the conviction by striking out the provision relative to costs. Collins v. Horning, 6 C. C. C. 517.

79. **Fine** — Payment to Clerk — Illegality — Quashing.]—A conviction by the Recorder's Court, of Montreal, requiring the payment of a fine to the clerk of the court, and not to the city, is illegal, and will be quashed upon certiorari. Wilcock v. City of Montreal, 5 Q. P. R. 126.

80. **Fine** — Distress — Hard Labour — Duplicity — Warrant of Commitment — Habeas Corpus.]—A conviction, which attaches hard labour to imprisonment in default of their being sufficient distress to levy the fine imposed, is bad. A conviction which charges an offence on two separate days, charges two distinct separate offences, and if it be a case where s. 26 of the Summary Convictions Act

applies, is bad ; a warrant of commitment based on such a conviction is consequently bad. 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. REGINA v. FARRAR, 11 Occ. N. 25, 1 Terr. L. R. 306.

81. **Fine** — INFRACTION OF BY-LAW — UNREASONABLE FINE — REDUCTION ON APPEAL.]—Under the Summary Convictions Act (B.C.) the court having power of appeal to re-try the charge, where the convicting magistrate had imposed an excessive punishment, and out of proportion to the offence, the court reduced the fine to a nominal sum. SING KEE. v. JOHNSTON, 5 C. C. C. 454.

82. **Fine and Costs or Imprisonment** — DEFENDANT SUBMITTING TO IMPRISONMENT — MOTION FOR CERTIORARI — DEPOSIT OF FINE AND COSTS — REFUSAL OF WRIT — SURRENDER OF PRISONER — RIGHT TO RETURN OF DEPOSIT.]—W., the plaintiff's assignor, having been condemned to pay a fine and costs for an infraction of the license law, and to imprisonment in default, sought to set aside the conviction by means of certiorari proceedings, after having suffered part of the imprisonment imposed. He deposited with the defendant, in his capacity of clerk of the peace at Montreal, the sum of $114.83, the amount of the fine and costs, besides, $50 to cover subsequent costs, pursuant to s. 217 of the Quebec Liquor License Act, 63 V., c. 12, and was released from prison. The writ of certiorari having been refused, W. surrendered himself again as a prisoner, and offered to serve the time of his imprisonment, but claimed at the same time from the defendant the repayment of the $114.83. The latter refused and gave as reasons that W., in making this deposit voluntarily and thus obtaining his freedom, had chosen the alternative of a fine, and the judgment setting aside the writ of certiorari had the result of awarding the deposit in payment of the fine to the misen-cause, the collector of revenue of Montreal :—**Held**, that this deposit possessed only the character of a security, and could not be converted into the payment of a fine and costs ; that the application for certiorari could not take away from one convicted of an offence his right to choose to submit to the term of imprisonment to which he is condemned, instead of paying the fine ; that the writ of certiorari, in suspending the execution of the sentence, has only the result when it is discharged, of rendering the person convicted liable to his term of imprisonment ; and if he makes that choice, he has a right to repayment of his deposit representing the fine and costs. WING v. SICOTTE, Q.R. 26, S.C. 387.

83. **Form of** — ADDITIONAL STATEMENTS — ADJOURNMENTS.]—Where in addition to the form prescribed by the Code, a conviction also refers to the adjournments at the trial, no inference can be properly drawn of the actual number of adjournments from the statement of same provided that such statement does not show there was a longer adjournment than eight days. PROCTOR v. PARKER, 3 C. C. C. 374, 12 Man. L. R. 528.

84. **Form of Conviction** — CANADA TEMPERANCE ACT — COSTS OF DISTRESS.] A conviction for selling liquor contrary to the provisions of the Canada Temperance Act, stated that unless "costs and charges of said distress" in addition to other penalties be paid, that accused be imprisoned for forty days :—Held, that as sec. 872 (a) Crim. Code provides for imprisonment unless expenses of the distress are paid, and that as the form of the conviction authorized by the Summary Covictions Act (Form W.W.) and warrant of commitment (Form FFF) uses the expression "costs and charges," and not "expenses" as in the Code, the legislature must have considered the two expressions were synonymous or meant the same thing, and conviction sustained. REGINA v. VAN TASSELL (No. 1), 5 C. C. C. 128, 34 N. S. R. 79.

85. **Gaming House** — 40 VIC. (CAN.) c. 33, s. 4 — UNLAWFUL GAME.]—Held, by Sir M. B. Begbie, C.J., on case stated under 20 & 21 Vic. (Imp.), c. 43 : 1. That it is not necessary to a conviction under 40 Vic. c. 33, s. 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 s. 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 surplussage and could be rejected. 20 & 21 Vic. (Imp.), c. 43, was not repealed by the Dominion Statute, 37 Vic. c. 42, and is therefore still in force in British Columbia. REGINA v. AH POW, 1 B. C. R. pt. I., 147.

86. **Gaming** — APPEAL — INTERESTED ACCOMPLICE AS WITNESS — CORROBORATION — CODE SEC. 199.]—The evidence against defendant was mainly that of an accomplice ; a man admittedly a professional gambler ; moreover there was evidence to show that he belonged to a clan hostile to the accused, and had received money to testify against defendant. Held, on appeal, the conviction should be set aside. R. v. AH JIM, 10 C. C. C. 126.

87. **Grievous Bodily Harm** — CRIM. CODE, SEC. 242.] —— OMISSION OF "UNLAWFULLY."]—A conviction under Crim. Code sec. 242 of inflicting grievous bodily harm is valid, thought it does not state the act was done "unlawfully." The word "unlawfully" refers only to the offence of wounding. REX v. TREADWELL, 5 C. C. C. 461.

88. **Habeas Corpus** — MEANING OF "LAST PAST."] — On habeas corpus proceedings for the discharge of the prisoner convicted under the liquor License Act of having sold liquor within the space of six months "last past" previous to the information, it was held that the conviction and warrant of commitment did not show that the offence was committed within six months before the laying of the information as required by sec. 143 of the Act. REX. v. BANTILIER, 8 C. C. C. 82, 24 Occ. N. 240.

89. **Habeas Corpus** — INDICTABLE OFFENCE REVIEWABLE BY HABEAS CORPUS.] A summary conviction under Part LV. of the Code upon a charge in which the jurisdiction of the magistrate is absolute and not dependent upon the consent of the accused can be enquired into upon habeas corpus in the same manner and to the same extent as any other summary conviction, notwithstanding section 798 provides that such conviction shall have the same effect as a conviction upon an indictment for the same offence. REGINA v. ST. CLAIR, 3 C. C. C. 551, 27 A. R. 308, 20 Occ. N. 204.

90. **Imposition of Fine** — INSUFFICIENT DIRECTION FOR PAYMENT.]—A summary conviction imposing a fine must contain an adjudication of forfeiture of the penalty imposed. An omission in the conviction to state such is fatal, and is a ground for the discharge of prisoner under habeas corpus. Where the conviction adjudges merely "payment forthwith" it is insufficient. REGINA v. CROWELL, 2 C. C. C. 34, 18 C. L. T. 29.

91. **Imprisonment** — DISORDERLY HOUSE.]—A conviction reciting that the keeper of a disorderly house is condemned to be imprisoned for the space of six months counting from the day of her arrival as a prisoner in the common gaol of the district is not open to the objection that it is not stated in a precise manner from what date the imprisonment is to be reckoned. REGINA v. BOUGIE, 3 C. C. C. 487.

92. **Imprisonment in Default of Payment of Penalty and Costs.**]—A summary conviction for keeping liquor for sale without a license in violation of the Liquor License Act, 1896, (N.B.) is not bad because the minute of adjudication prescribed imprisonment for thirty days in default of payment of the penalty and costs, the time limited in the statute being thirty days in default of such payment. EX PARTE ROGERS, 7 C. C. C. 314, 36 N. B. R. 39.

93. **Imprisonment with Hard Labor** — HABEAS CORPUS.]—There is no authority under sec. 501 of the Code to impose imprisonment with hard labor in default of paying the penalty, compensation and costs on a conviction for the offence of wilfully and unlawfully killing a dog, and a defendant taken into custody will be discharged upon habeas corpus. REGINA v. HORTON, 3 C. C. C. 84, 31 N. S. R. 217, 43 C. L. J. 42.

94. **Imprisonment** — WARRANT OF COMMITMENT — DEFECTS — PLACE OF OFFENCE — TIME FOR COMMENCEMENT OF IMPRISONMENT — COURT OF RECORD COPY OF SENTENCE.]—A motion for the discharge of S., a prisoner serving a term of imprisonment at Dorchester Penitentiary, was based upon alleged defects in the warrant of commitment signed by the clerk of the county court Judge's criminal court at Halifax, returned by the warden of the penitentiary as the authority under which S. was held :—Held, that, even if the place where the offence was committed was not stated in the body of the record of conviction,it was covered by that named in the margin, viz.: "the county of Halifax." Semble, that the "copy of the sentence" required to be delivered to the warden of the penitentiary (R.S.C. c. 182, s. 42), need not contain all the averments essential to the validity of an indictment or conviction :—Held, that the document certified by the warden in the present case as his authority was sufficient. REX v. SMITHEMAN, 24 Occ. N. 329.

95. **Information** — SUSPICION AND AND BELIEF — WARRANT FOR ARREST — APPEAL — CODE SEC. 882.]—The defendant was charged under the Ry. Act, 1903, on information stating that the defendant "had just cause to suspect and believe, and did suspect and believe" that the defendant, etc., did wilfully leave open a certain gate, etc.:—Held, that the information leading the warrant of arrest should have set out the grounds of suspicion; where objection was taken before the magistrate and overruled, the prosecutor electing not to amend, such objecttion will be sustained on appeal. R. v. LIZOTTE, 10 C. C. C. 316.

96. **Injury to Property** — DESCRIPTION OF OFFENCE.]—N. L. was committed to gaol under a warrant of a stipendiary magistrate, charging him with having at L., in the county of C. B., "unlawfully and wilfully destroyed and damaged property owned by A.M.S., on the 24th day of December, 1903":—Held, that the conviction was bad because it did not specify the injuries and the nature of the property injured. Regina v. Spain, 18 O. R. 385, followed. IN RE LEARY, 24 Occ. N. 70.

97. **Intoxicating Liquors** — LOCALITY OF OFFENCE — AMENDMENT OF CONVICTION — CODE SEC. 889.]—1. The provisions of the Ontario Liquor License Act are applicable to a boat travelling on Lake Huron from an Ontario port, and the jurisdiction of the province extends to the international boundary line. 2. A conviction is not bad because the particular place at which the offence is alleged to have been committed is not set forth, when it is stated to have been committed within the county, in which the magistrate had jurisdiction. 3. When the conviction was for unlawfully allowing liquor to be sold, whereas the offence under the statute was "selling without a license" required by law, it was held to be capable of amendment by applying the remedial provisions of Code Sec. 889. R. v. MEIKLEHAM, 10 C. C. C. 382.

98. **Intoxicating Liquor** — DEFECTIVE INFORMATION.]—A conviction made by two justices of the peace for an offence under the Canada Temperance Act, was quashed on the ground that the information was laid before one justice. EX PARTE WHITE, 3 C. C. C. 94, 34 N. B. R. 333.

99. **Intoxicating Liquor** — SALE OF LIQUOR TO PROHIBITED PERSON.]—An order under the Ontario Liquor License Act, sec. 124, prohibiting the sale of liquor to a person, will not support a conviction for disobedience to such order, if it does not show upon its face that it was made to appear in open court in the country where the person resides, that such person was wasting or lessening his estate, etc., and that such person was summoned before the court. REGINA v. CHARLES MOUNT, 3 C. C. C. 209, 30 O. R. 303.

100. **Intoxicating Liquors** — SUPPLYING TO INDIAN — PENALTY LESS THAN PROVIDED BY ACT — CODE SEC. 890.]—Defendant was found guilty of a breach of sec. 77 of the Liquor License Act Ordinance and fined $5.00 and costs, and in default ordered to be imprisoned for twenty days. The penalty provided by the section in question was $25.00 for a first offence, and in default of payment, one months' imprisonment :—Held, the conviction was bad as imposing a less penalty than that provided, and that Code sec. 889 and 890 did not apply as relating to proceedings only by way of certiorari. R. v. HOSTYN, 9 C. C. C. 138, 1 W. L. R. 113.

101. **Intoxicating Liquors** — CANADA TEMPERANCE ACT — CERTIORARI — WRONG RETURN.]—Where the wrong information is returned with a writ of certiorari through inadvertence, and an affidavit explaining the circumstances is made by the magistrate, the conviction will not be quashed :—Held, also, that a purely clerical error in the date of the offence charged in the information is not a ground for setting aside a conviction otherwise regular. EX PARTE KAVANAGH, 2 C. C. C. 267, 34 N. B. R. 1.

102. **Intoxicating Liquors** — ARREST UNDER JUSTICE'S WARRANT — PRISONER FOUND IN ANOTHER COUNTY — WARRANT NOT INDORSED — UNLAWFUL CAPTION — LEGAL DETENTION — HABEAS CORPUS — REFERENCE TO DIVISIONAL COURT — CONVICTION FOR SECOND OFFENCE — FORM — FINDING OF PREVIOUS CONVICTION — ORDER OF PROCEEDINGS — AMENDMENT.]—Appeal by prisoner from order of Anglin, J., upon the return of the habeas corpus and certiorari in aid, refusing to discharge the prisoner and remanding him to the custody of the keeper of a common gaol. The prisoner was convicted for a second offence of selling liquor without license. He was sentenced to imprisonment with hard labour for four months. The gaoler made his return to the habeas corpus, assigning the warrant of commitment as the cause of detention. The conviction and proceedings before the magistrate were returned upon the writ of certiorari in aid, and an amended conviction was also returned. It was objected that the warrant was defective in form ; that the arrest thereunder was irregular and void, the warrant not having been backed by a justice of the peace of the county of Victoria, in which county the prisoner was arrested, and whence he was taken to gaol. It was contended that the conviction, as well in its amended as in its original form, was invalid, as the finding in respect of the previous conviction was omitted in the latter and improperly set forth in the former, and also because the magistrate had entered upon the inquiry as to the previous conviction before adjudicating upon the guilt of the prisoner in respect to the charge then before him, contrary to the provisions of sec. 101 of the Liquor License Act :—Held, all the objections urged against the proceedings failed. The second deposition of Chief Constable Jarvis shews that the magistrate had already adjudicated upon the charge laid in the information then before him before entering upon the inquiry as to the fact of the previous conviction. The affidavits from which it was argued that he had probably not done so are too vague and indefinite to warrant an assumption to the contrary of the deposition ; but the amended conviction, though carelessly prepared and not following accurately the form given in the schedule to the Act, of the conviction, may be amended upon the evidence : 1 Edw. VII., ch. 13 (O) ; Criminal Code, sec. 889, 896. There is nothing in the objection that the arrest was made in the county of Ontario without the warrant having been backed by a justice of that county. The warrant of commitment is sufficient to justify the prisoner's detention in the gaol of the proper county and the court will not, on habeas corpus, inquire into any irregularity in his caption. The distinction in this respect between the practice in criminal and civil cases has been settled too long and too firmly to admit of the point being now debated. Regina v. Jones, 8 Occ. N. 332, overruled, appeal dismissed. REX v. WHITESIDES, 4 O. W. R. 113, 237, 25 Occ. N. 33, 8 O. L. R. 622.

103. **Jurisdiction** — SERVICE OF SUMMONS.]—Service of a summons on a defendant's wife at his usual place of abode, will not support a summary conviction, where the defendant at the time of the service and until after the trial was without the jurisdiction of the province, as the magistrate could not acquire jurisdiction over the person of the defendant while he was out of the province. EX PARTE DONOVAN, 3 C. C. C. 286, 32 N. B. R. 374.

104. **Jurisdiction** — ASSAULTING PEACE OFFICER.]—An accused charged with wilfully obstructing a peace officer in the execution of his duty can be tried summarily by the magistrate under the summary conviction clauses of the Code, or he can be tried before a magistrate as for an indictable offence. THE KING v. NELSON, 8 B. C. R. 110, 4 C. C. C. 461.

105. **Jurisdiction** — CANADA TEMPERANCE ACT — AWARD OF IMPRISONMENT FOR THREE MONTHS.]—The Canada Temperance Act provides sec. 100 " Everyone who, etc., shall on summary conviction be liable to a penalty for the first offence

of not less than fifty dollars, or imprisonment for a term not exceeding one month," etc.:—Held, that the term of imprisonment was imposed by way of punishment, and not as a term of imprisonment to be inflicted in default of payment of the penalty; recourse must be had to Code sec. 872 to provide a term of imprisonment for default in payment of the fine. R. v. BLANK, 10 C. C. C. 360.

106. **Justice of the Peace** — MASTER AND SERVANT ACT — REFUSAL TO WORK —INFORMATION — AMENDMENT — FORM OF CONVICTION — OMISSIONS — DISTRESS COSTS.]—The prosecutor hired the defendant to work on a farm and paid for the defendant's transportation thereto. The defendant worked a few hours and then left. The prosecutor swore to an information that the defendant did "accept the sum of $1.30 to pay his fare to B. on the condition that the said amount was to be worked out, and refused to work after reaching this place, with the exception of 4 hours," etc. The magistrate issued a warrant setting out the facts stated in the information and adding "consequently obtaining money under false pretences," and the defendant was arrested. The magistrate amended the information by adding a reference to the Master and Servant Act, 1901, but the information was not resworn. The amended information was read over to the prisoner and he was informed that he was to be tried under it as amended. He made no objection; the prosecutor gave evidence and the defendant was sworn and testified on his own behalf. The magistrate adjudged that the defendant should be fined $5 and $4.88 costs, and if the amounts were not paid forthwith he should be committed to gaol. A note of conviction was made and a formal conviction was drawn up. The conviction form was headed "conviction for a penalty to be levied by distress," but no such term was mentioned in the body of it:—Held, that the nature of the offence was sufficiently clear in the original information, and any doubt was removed by the addition of the reference to the Act. 2. That the information having been read over and the trial proceeding without objection, and the magistrate having the prisoner before him, even if brought there improperly, he might try him on the amended information not resworn, although the Act required an information on oath. 3. That the court, being satisfied that an offence of the nature described in the conviction had been committed, and that the magistrate had jurisdiction, and that the punishment imposed was not excessive, should not hold conviction invalid because the date and place of offence were not stated, there being power to amend. 4. That the heading formed no part of the conviction, which was correctly drawn under the statute. 5. That the costs of conveying the accused to gaol being omitted, was a matter which could be amended, if necessary, but here there were no such costs, as the prisoner never went to gaol. 6. That there was special power by I Edw. VII. c. 12, s. 14, under which the prisoner was convicted, to award imprisonment in default of payment; and that by R. S. O. 1897, c. 90, s. 4, that power covered costs as well as fine. REX v. LEWIS, 23 Occ. N. 190, 5 O. L. R. 509, 2 O. W. R. 290, 566.

107. **Limitation of Time** — R. S. O., 1897, c. 90 — CRIM. CODE 841.]—The Ontario Summary Convictions Act (R. S. O. 1897, c. 90, s. 2), incorporates sec. 841, Crim. Code. and a summary prosecution for erecting a wooden building within the area of fire limits established by a municipal by-law is irregular and void, unless the information be laid within six months after the offence complained of. REX v. MCKINNON, 5 C. C. C. 301.

108. **Magistrate's Omission to Inform Defendant of right to Jury Trial.**]—A conviction upon summary trial where the magistrate omitted to inform the defendant of his right to be tried by a jury at the next sitting of the Court of Competent Jurisdiction is invalid. REX v. CONWAY, 7 C. C. C. 129.

109. **Mens rea** — SANITARY BY-LAW— — OVERCROWDING — "SUFFERING TO BE OCCUPIED"— PROOF OF KNOWLEDGE OF DEFENDANT.]—In order to support a conviction under the clause in the Victoria Consolidated Health By-law, 1886, providing: (17) No person shall let, occupy, or suffer to be occupied as a dwelling or lodging, any room (a) which does not contain at least 384 cubic feet of space for each person occupying the same," it is necessary that there should be some evidence of guilty knowledge actual or constructive, on the part of the person charged. RE WING KEE, 2 B. C. R. 329.

110. **Midwifery** — Particular Act to be Specified. —A conviction purporting to be made for practising midwifery within a year from the date of the information for hire, gain and hope of reward, by prscribing and attending and operating on women must set out the particular act or acts by the defendant which constitute the practising. Regina v. Whelan, 4 C.C.C. 277.

111. **Motion to Quash** — Recognizance — Necessity for Defendant Joining in — Company Defendant — Leave to Deposit Money in Lieu of Recognizance — Defective Condition — Costs.]—Re Western Co-Operative Construction Co and Brodsky (Man.), 2 W. L. R. 541.

112. **Motion for Rule Nisi to Quash** — Untenable Grounds — Like Motions in Other Cases — Rule Granted on Terms.]—Rex v. McGinnes, 1 O. W. R. 812.

113. **Motion to Quash** — Preliminary Objections — Security — Cash Deposit — Written Document — Certiorari — Notice — Objection to — Delay.]—On the return of a rule nisi to quash the conviction of the defendant for an offence against the Liquor License Ordinance, it was objected that no proper security had been given, as required by Supreme Court rule 13. It appeared by the certificate of the registrar that $100 in cash had been deposited with him in this cause, and that such sum stood to the credit of the cause in a chartered bank. It was the fact, however, that no written document had been deposited with the registrar stating the conditions upon which the deposit was made. Rule 13 requires the deposit to be made "with a condition to prosecute such motion and writ of certiorari":—Held that no written document was necessary, the money being in the hands of the registrar for the purposes provided by law. It was also objected that the notice did not give the name of the party who intended to apply, nor the name of the court or the Judge in Chambers :—Held, that the court should not entertain this and other like objections, for after a writ of certiorari was issued the objections should be raised by a substantive motion to quash the writ :—Held, also, that when more than three months have intervened between the return of the writ of certiorari and the motion for a rule nisi, the preliminary facts must be taken to be admitted, and an application to quash the writ would be too late. Regina v. Davidson, 21 Occ. N. 98.

114. **Motion to Quash** — Jurisdiction of Single Judge — Disorderly House — Certiorari — Inmate — Pleading Guilty — Form of Conviction — Summary Conviction or Summary Trial — Penalty.]—A single Judge in the territories under jurisdiction under 54 & 55 V. c. 22, s. 7, s.-s. 2, to hear and determine applications to quash summary convictions, whether the convictions have been brought into court by certiorari or not. If the conviction has been returned to the clerk of the Supreme Court, by virtue of s. 102 of the N. W. T. Act, the issue of a writ of certiorari is unnecessary. The defendant pleaded guilty before a magistrate of being an inmate of a disorderly house, an offence punishable either under part XV. of the Criminal Code (Vagrancy), where the fine on summary conviction is limited to $50, or under part LV. (Summary Trials of Indictable Offences), where the fine and costs together must not exceed $100. A fine of $90, with $6.25 costs was imposed, but the conviction was in the form WW prescribed under part LVIII., relating to summary convictions, and not the form QQ prescribed under part LV., and did not contain the words "being charged before me the undersigned," which appear in the latter form. On an application to quash, the conviction was sustained as a good conviction under part LV., as being of like effect to the form therein prescribed ; the amount of the fine and the fact that the accused was not charged with or convicted of being a loose, idle, or disorderly person, indicating the procedure adopted by the magistrate. The omission to recite that the accused had been charged with the offence before him, a fact which appeared from the proceedings, is a matter of form only, and not sufficient to void the conviction. Rex v. Ames. 5 Terr. L. R. 492.

115 **Motion to Quash** — Recognizance — Insufficiency — Justice of the Peace — Married Woman — Separate Estate.]—The defendant is a necessary party to the recognizance required upon a motion to quash his conviction ; and where his recognizance

was invalid because entered into before a justice of the peace for a county other than that in which the conviction was made, the recognizance of his surety, though properly taken, was held bad also. Semble, that a recognizance by the wife of the defendant might be binding in respect to her separate estate, which she connected by affidavit with her recognizance. REX v. JOHNSON, 24 Occ. N. 266, 7 O. L. R. 525, 3 O. W. R. 221, 222.

116. **Motion to Quash** — PRACTICE — DUTY OF JUSTICE TO RETURN DEPOSITIONS — CERTIORARI.]—Section 888 of the Criminal Code provides for the return of convictions by justices into the court to which the appeal is given :—Semble, apart from this provision, it is the duty of justices to make return also of the depositions upon which the conviction is founded :—Held, that papers purporting to be the depositions relating to the conviction having been returned therewith, they should be assumed to be such depositions ; that they were properly before the court, and a writ of certiorari was unnecessary. REX v. RONDEAU, 5 Terr. L. R. 478.

117. **Municipal Ordinance** — DEFECTIVE CONVICTION.]—Where a Municipal Ordinance (N.W.T.) authorized municipal councils to pass by-laws for licensing "transient traders and other persons who occupy premises in the municipality for a temporary period," a conviction which omitted to allege the defendant was such, was quashed. REGINA v. BANKS, 2 Terr. L. R. 81, 1 C. C. C. 370.

118. **Ontario Summary Convictions Act** CRIMINAL CODE SEC. 841 — TIME FOR LAYING INFORMATION.]—The Ontario Summary Convictions Act, R. S. O. c. 90, s. 2, has the effect of incorporating s. 841 of the Criminal Code, and therefore, in the case of any offence punishable on summary conviction, if no time is especially limited for making any complaint or laying any information under the Act or law relating to the particular case, the complaint must be made or the information laid within six months from the time the matter of complaint or information arose. REX v. MCKINNON, 22 Occ. N. 161, 5 O. L. R. 508, 1 O. W. R. 199.

119. **Ontario Summary Convictions Act** — STATED CASE — APPLICATION OF CODE SEC. 900.]—Section 900 of the Criminal Code prescribes the practice upon the statement of a case by a magistrate. The internal evidence supplied by this latter section shows that the proceeding by way of stated case is a form of appeal. Under the Ontario Summary Convictions Act R. S. O. 1887, c. 74, all the enactments of the Dominion laws relating to procedure or summary convictions, are incorporated into the provincial law, except that concerning appeals. Hence, appeals from convictions under Ontario Statutes are to be lodged and prosecuted as provided by the provincial enactment and are withheld from being subject to Dominion legislation. R. v. ROBERT SIMPSON CO., LTD., 2 C. C. C. 257, 28 O. R. 231.

120. **Payment of Fine** — NO APPEAL AFTER — SECURITY — MONEY DEPOSIT IN LIEU OF RECOGNIZANCE — RETURN OF TO APPELLATE COURT — CR. CODE, SS. 880 (c) AND 888.]—A person by paying his fine on a summary conviction loses any right of appeal he might otherwise have had under s. 880 of the Criminal Code. Where on an appeal from a summary conviction an appellant makes a money deposit in lieu of recognizance, the deposit, which includes both the fine and the security for costs of appeal, should be returned by the justices into the appellate court, and in default the appeal cannot be heard. REX v. NEUBERGER, 9 B. C. R. 272.

121. **Plea of Guilt** — APPEAL.]—Where a conviction has been made under the Summary Convictions Part of the Code upon a plea of guilty, such plea is not an estoppel to an appeal on an objection in point of law, but in respects to the facts relating to his guilt or innocence, such an appellant is not a person aggrieved within the meaning of sec. 879, and cannot call upon the respondent to produce evidence to establish that he is guilty of the offence charged. REX X. BROOK, 7 C. C. C. 216, 5 Terr. L. R. 369.

122. **Powers of Justice of Peace** — CONVICTION AGAINST A CORPORATION.]—A justice of the peace cannot compel a corporation to appear before him, nor can he bind it over to appear and answer to an indictment. EX PARTE WOODSTOCK ELECTRIC LIGHT CO., 4 C. C. C. 107, 34 N. B. R. 460.

123. **" Procuring a Pistol "**— CRIMINAL CODE, SEC. 108 — NO OFFENCE.]—A conviction for " procuring a pistol with intent unlawfully to do injury to another person," is not a sufficient conviction " for having on his person a pistol." REGINA v. MINES, 1 C. C. C. 217, 25 O. R. 577.

124. **Quashing** — NO FORMAL CONVICTION DRAWN UP — POWER TO QUASH.] —The fact that no formal conviction was drawn up, but only a minute of adjudication is no reason why the conviction should not be quashed. The formal conviction is only the entering on parchment the proceedings which have already taken place. REX v. MANCION, 8 C. C. C. 218, 8 O. L. R. 24.

125. **Quashed Where Confession of Guilt Improperly Admitted in Evidence.]** —A conviction for murder was quashed, where a confession of guilt was admitted in evidence, without the Crown showing that such confession made to person in authority was free and voluntary. REGINA v. PAH-CAH-PAH-NE-CAPI, 4 C. C. C. 93, 17 C. L. T. 306.

126. **Quashing** — FOR BIAS OF MAGISTRATE — RELATIONSHIP TO PROSECUTOR.]—Held, that a conviction must be quashed where entered by a justice who was the father of the prosecutor, and the prosecutor was entitled to half of the fine recovered. R. v. STEELE, 2 C. C. C. 433, 26 O. R. 540.

127. **Return of** — DUTY OF JUSTICE — PRACTISING MIDWIFERY — CODE SEC. 888.]—The accused was convicted of practising medicine and surgery without a license. Before the application was made the justice had returned to the clerk of the Supreme Court at Edmonton, the conviction and information and depositions.:— Held, that it is the duty of the convicting justice apart altogether from Code sec. 888, to return not only the record of the conviction, but also the depositions and all the proceedings ; that where such return has been made the court may look at the proceedings returned even though a writ of certiorari has not been taken out, and the court is justified in assuming, in the absence of anything indicating the contrary, that all the evidence taken is contained in the depositions so returned. That midwifery is not comprised in either " medicine " or " surgery " mentioned in the Medical Professions Ordinance of the North-West Territories. R. v. RONDEAU, 9 C. C. C. 523, 5 Terr. L. R. 478.

128. **Revenue Tax, Crown not Affected by Statute Limiting Time for Making Complaint.]**—The Summary Convictions Act (R.S.B.C. ch. 176) which limits the time for making a complaint or laying an information to three months from the time when the matter of the complaint or information arose, where no time is specially limited by any act relating to the particular case, does not apply to prosecutions by the crown for the recovery of monies due under the revenue tax law. THE KING v. LEE HOW, 4 C. C. C. 551.

129. **Same Conviction May Include Several Offences.]**—Under the Consolidated Ordinances, sec. 106, N.W.T., several offences may be included in one conviction. REGINA v. WHIFFEN, 4 C. C. C. 143.

130. **Seamen's Act (Canada)** — APPEAL —An appeal against a summary conviction under the Seamen's Act of Canada would lie not to the Court of Appeals, but to the Court of Queen's Bench, Crown Side, under sec. 879 of the Code, if such appeal had not been expressly taken away. REGINA v. O'DEA, 3 C. C. C. 402, 92. R. Q. B. 158.

131. **Second Offence** — AMENDMENT — SECS. 209, 210 AND 889.]—Secs. 209, 210 Criminal Code should not be invoked to amend a conviction for a second offence which is defective for want of proof of first conviction, the penalty where the adjudication of a former conviction is omitted, being greater than could be adjudged. REGINA v. HERRELL, 1 C. C. C. 510, 12 Man. L. R. 198, 522.

132. **Several Offences Included** — DISCRETION ON APPEAL TO ENTERTAIN OBJECTION NOT RAISED AT TRIAL.]—Where upon a stated case a summary conviction was questioned because it was for two separate offences, viz.: carrying on the business of real estate and also the business of an insurance agent, separate licenses being required in each case, the conviction was quashed although the objection was not taken at the trial, the entertaining of the point on appeal being discretionary, though under such circumstances the appellant will not be allowed costs. SIMPSON v. LOCK, 7 C. C. C. 294.

133. **Several Charges Included in One Judgment.**]—Under the provisions of sec. 188 of Ontario Elections Act any number of corrupt offences charged as having been committed by the defendant at the same election are intended to be tried together and to be included in the same judgment, and it is not necessary to adjudicate on each charge before hearing the evidence on the other charges. RE A. E. CROSS, 4 C. C. C. 173, 2 Elec. Cas. Ont. 158.

134. **Service** — PROOF OF.]—A conviction entered against a defendant in his absence, on proof that the summons was served on defendant's wife the day previous, is bad, and will be set aside for want of jurisdiction. Proof of the hour of service, and distance from place of sitting of the court are essential elements to determine the question of reasonableness of the notice required by sec. 853 of the Code. RE O'BRIEN, 10 C. C. C. 142.

135. **Service of Summons** — ASSAULT ON CONSTABLE SERVING SUMMONS — WHETHER HE IS A "PEACE OFFICER" IN DISCHARGE OF HIS DUTY WITHIN s. 34, c, 162 R. S. C.— INDICTMENT FOR ASSAULT UNDER s. 34 — COMPETENCY OF DEFENDANT AS A WITNESS — R. S. C. c. 174, s. 216.]—The service of a duplicate summons issued under the Summary Convictions Act (32 & 33 Vict. c. 31, s. 2), is sufficient service. An assault on a constable while serving a summons issued by a magistrate for a violation of the Canada Temperance Act, is an assault on a peace officer in the execution of his duty, within s. 34, c. 162, Rev. Stat. of Canada (Palmer J., dissenting.) On the trial of an indictment for such assault the defendant is not a competent witness on his own behalf, under the Rev.Stat. of Canada, c. 174, s. 216 (Palmer, J., dissenting.) REGINA v. MCFARLANE, 27 N. B. R. 529.

136. **Special Court** — ONTARIO LIQUOR ACT, 1902 — CERTIORARI — COMMITMENT AFTER SERVICE OF — DISCHARGE — AMENDMENT — ERROR IN NAME — ADJUDICATION — SENTENCE.]—REX x. FORSTER, 2 O. W. R. 312, 5 O. L. R. 624.

137. **Stated Cases** — RECOGNIZANCE — CASH DEPOSIT IN LIEU, OF.]—Appeal by way of case stated under s. 900 of the Code. The defendant was convicted of an offence under the Act to restrict the Importations and Employment of Aliens. Instead of entering into the recognizance required by s.-s. 4 of s. 900 of the Code, the defendant deposited a marked cheque for $100 with the convicting magistrate: —Held, that the recognizance was a condition precedent to the jurisdiction of the Court to hear the appeal, and no substitute was permissible. REX v. GEISER, 21 Occ. N. 604, 8 B. C. R. 169.

138. **Stated Case.**]—A case stated is not obtainable from a summary conviction, after an appeal has been taken to the county court under Code sec. 879, and adjudicated upon. R. v. TOWNSHEND, 6 C. C. C. 519, 35 N. S. R. 401.

139. **Stealing.**] — A conviction on a chage of stealing "in or from" a building is for one crime, and no offence in the alternative is imputed by the disjunctive expression, "in or from." REX v. WHITE 4 C. C. C. 430, 34 N. S. R. 436.

140. **Steamboat Inspection Act** — PERSON AGGRIEVED.]—The informant under the steamboat inspection Act, 1898, must be a person aggrieved . . . . . specified person who has sustained a legal loss or liability by an act done in respect of which the penalty is given and as this was not shown, conviction was quashed. REX v. FRANKFORTH, 8 C. C. C. 57.

141. **Substitutional Service of Summons** — CONVICTION ON DIFFERENT CHARGE.] —Where defendant was convicted of keeping liquor for sale in violation of the Canada Temperance Act, in absence of his appearance, he having been served substitutionally at his last known place of abode with a summons issued on an information charging the offence of illegally selling:—Held, on motion for habeas corpus, that the conviction was bad, and prisoner should be discharged. An information charging one offence cannot be amended in the absence of the accused so as to charge an entirely new and different offence in respect of which no summons has been served . R. v. LYONS, 10 C. C. C. 130.

142. **Supportal of Conviction under Summary Trials Procedure.**]—Where a conviction has been made by a magistrate acting under the summary convictions clauses of the Crim. Code, and the punishment is in excess thereof, it is not permissible to support the conviction under

the "Summary Trials" sections of the Crim. Code, though the magistrate had jurisdiction, and though the offence was of the class for which no consent is necessary. REX v. LAURA CARTER, 5 C. C. C. 401.

143. **Third Offence** — SECOND CONVICTION INVALID — HABEAS CORPUS.]—On habeas corpus proceedings to quash a third conviction it appearing that the second conviction which was put in evidence was invalid, the third conviction was quashed. KING v. MACDONALD, 5 C. C. C. 97.

144. **Third Offence Under Liquor License Act, (N.S.)**]—An accused cannot be adjudged guilty of a third offence against the Liquor License Act (N.S.), that is as a third offence carrying an increased penalty or punishment, e. g. loss of license, unless it were proved that the offence took place on a different day from the day on which the offences were adjudged to have been committed by the two previous convictions and after the information on which the first conviction proceeded was laid. REGINA v. MURRANS, 7 C. C. C. 459.

145. **Time of Service** — PROCEEDING IN ABSENCE BF DEFENDANT.]—Defendant was charged with an infraction of the License Act. It appeared that a summons was issued on the 20th June, 1905, for defendant's appearance on the 21st day of June at 10 o'clock a.m. at the town of Truro. Defendant was personally served on the 20th inst.in Truro where he carried on business :—Held, a sufficient proof of service, and that it was reasonable notice ; that magistrate acted within his jurisdiction, and the conviction must stand. R. v. CRAIG, 10 C. C. C. 252.

146. **Two Informations** — WITHDRAWAL OF ONE — CANADA TEMPERANCE ACT.]—Under s. 858 of the Criminal Code, after the evidence has been heard, the magistrate is not bound either to convict or discharge the defendant ; he may allow the prosecutor to withdraw the charge, and he may do so even when another information for the same offence has been laid by the same prosecutor against the same defendant, and the determination is still pending. Ex. p. WYMAN, 34 N. B. Reps. 608.

147. **Two Offences** — NO PRESUMPTION THAT SENTENCES RUN CONCURRENTLY.]—The prisoner having been convicted of two offences against the Canada Temperance Act, applied for writ of habeas corpus on the ground that the justices not having stated that the second sentence was to commence at the expiration of the first, they ran concurrently. Application refused. EX PARTE BISHOP, 1 C. C. C. 118.

148. **Uncertainties in, Respecting Date, Place, Etc., Open to Amendment.**]—A summary conviction under a municipal by-law passed in pursuance of the Ontario Municipal Act, against a transient trader for offering goods for sale without having paid the license fee in that behalf, will not be disturbed on an objection that the conviction was uncertain respecting the date, place and goods sold, such objection being open to amendment from the facts in evidence under the authority of 2 Edw. VII., ch. 12, section 15. REX v. MYERS, 7 C. C. C. 303, 6 Ont. L. R. 120, 23 Occ. N. 280.

149. **Uncertainty of** — NO OFFENCE DISCLOSED — WILFUL INJURY.]—A conviction for wilful injury to property which does not disclose either the nature of the property or the nature of the injury thereto is bad for uncertainty, and must be quashed. REX v. LEARY, 8 C. C. C. 141, 24 C. L. S. Occ. N. 70.

150. **Uncertainty.**]—Conviction quashed on ground that it did not specify the act or acts which constituted the offence against the statute. REGINA v. SOMERS, 1 C. C. C. 46, 24 O. R. 244.

151. **Unnecessary Recitals** — ADJOURNMENT OF HEARING IN ABSENCE OF ACCUSED.]—1. A conviction in the form prescribed by the Crim. Code will not be held bad because it also contains recitals showing certain adjournments of the hearing before the justice but not showing that no adjournment had been made for a longer period than the eight days allowed by sec. 857, s.-sec. 1, of the Crim. Code, although more than three months had elapsed from the commencement to the end of the proceedings. It is not necessarily to be inferred from the statement of certain facts, which were not requiredto be stated, that other circumstances necessary to the jurisdiction of the magistrate did not exist. 2. 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 those parties, solicitiors or agents who are in fact present. PROCTOR v. PARKER, 12 Man. L. R. 528.

152. **Vagrancy** — CONVICTION — INFORMATION — FACTS NECESSARY TO BE STATED.]—Application for habeas corpus. The accused was charged with being a "loose, idle person, or vagrant," and was sentenced by a police magistrate, and sentenced to six months' imprisonment with hard labour. The conviction described the offence in the same terms as the information :—Held, that the conviction was bad in that it did not set out the facts constituting the offence. Under s. 207 of the Code various acts constituting vagrancy are specified, and an information charging vagrancyshould shew the particular facts on which the prosecution relies to establish the offence. REX v. MCCORMACK, 23 Occ. N. 207, 9 B. C. R. 497.

153. **Vagrancy** — CONVICTION INSUFFICIENTLY DESCRIBING OFFENCE — CR. CODE, SS. 207, 208 AND 611.]—Accused was charged with, and convicted of being "a loose, idle person or vagrant ":—Held, per Hunter, C.J., that the conviction was bad in that it did not set out the facts constituting the offence. Under s. 207 of the Code, various acts constituting vagrancy are specified, and an information charging vagrancy should shew the particular facts on which the prosecution relies to establish the offence. REX v. MCCORMACK, 9 B. C. R. 497.

154. **Vagrancy.**] — An information charged defendant with living without employment, and having no visible means of support, and a conviction was entered on that charge, and also for having supported himself by gaming or crime, while having no peaceable calling or profession : —Held, inasmuch as the latter offence was not charged in the information the conviction was irregular and illegal. R. v. RILEY, 2 C. C. C. 130.

155. **Vagueness** — AMENDMENT OF — PRACTISING MEDICINE.]—A conviction for unlawfully practising medicine which stated merely that the defendant practised medicine, was quashed on the ground that it did not specify the particular act or acts which constituted the alleged practising of medicine, and the court refused to amend as it could not on the evidence come to the conclusion that an offence was committed of the nature specified in the conviction. REGINA v. COULSON, 1 C. C. C. 114, 24 O. R. 246.

156. **Variance in Order from Minute of Adjudication** — COSTS.]—Accused was convicted under Canada Temperance Act for unlawfully selling intoxicating liquors. It was objected that the record of conviction did not agree with the minute of conviction on which it was based, as the record provided for costs and charges of conveying to gaol :—Held, the omission to provide for the same in the minute did not invalidate the record of conviction: —Held, also, that it was not necessary that the information, summons, minute and record of conviction should be in accordance with the forms in such cases provided by the statute. R. v. BEAGAN, (No. 2), 6 C. C. C. 57, 36 N. S. R. 208.

157. **Variance in Form** — MINUTE OF ADJUDICATION.]—The Ontario Medical Act R. S. O. 1897, c. 176, prescribes punishment of imprisonment not exceeding one month for an offence against the Act, and where in a summary trial the minute of adjudication was imprisonment for thirty days from February 5th, and the conviction limited the punishment to a month, the variation in the conviction from the minute of adjudication, was held to be something more than a defect of form or substance. It is a new adjudication. REX v. LEE, 4 C. C. C. 416.

158. **Waiver of Irregularities on Record of.**]—A pilot in appearing, pleading and attending an investigation of a complaint against himself before the Montreal Harbor Commissioners' Pilotage Committee, waives the irregularities before conviction which appear on the face of the record. PERRALUT v. MONTREAL HARBOR COMMISSIONERS, 4 C. C. C. 501, Q. R. 17 S. C. 501.

159. **Want of Form** — TRIAL BY CONSENT OF ACCUSED — AGGRAVATED ASSAULT.]—Where upon the consent of the accused to be tried summarily, there was a conviction for an aggravated assault but the conviction was silent as to the consent, such omission in the conviction is a "want of form" covered by section

800 of the Code, which provides that a conviction under Part LV. shall not be invalid for want of form. REGINA v. BURTRESS, 3 C. C. C. 536, 20 Occ. N. 368.

160. **Warrant of Commitment** — NO CONVICTION ALLEGED — HABEAS CORPUS — RETURN.]—On an application for a writ of habeas corpus, and for the discharge of prisoner detained in custody under a warrant of a justice of the peace in form V., Criminal Code, s. 596 (committal for trial), that warrant did not allege a conviction, but only that the accused had been charged before the justice. The conviction upon which the warrant was issued was admittedly bad, but an amended conviction was returned to the clerk by the justice after the argument:—Held, that where a warrant of commitment upon a conviction does not allege that the prisoner has been convicted of an offence, the conviction cannot be referred to in order to support the warrant. Order made discharging prisoner. Semble, that had the warrant shewn the prisoner to have been convicted of some specific offence, even though insufficiently stated, the conviction could have been referred to in order to support it. An application to discharge a prisoner held under a defective warrant of committal in execution will not be adjourned in order to procure the return of the conviction with a view to supporting the warrant, if the prisoner has been actually brought up on a habeas corpus, aliter where he has not been brought up. REGINA v. LALONDE, 2 Terr. L. R. 281.

161. **When material to Specify Date of Offence.**]—The specifying in a conviction of the date when the offence was committed is material only when the time for conviction is limited by statute and it is necessary that the date of conviction should bring it within that time when compared with the date alleged for the offence. REX. v. CARLISLE, 7 C. C. C. 470, 6 Ont. L. R. 718, 23 Occ. N. 321.

162. **Withdrawal**—RIGHT TO DISMISSAL —SECOND CHARGE.]—On a summary proceeding the magistrate may allow the charge to be withdrawn, though evidence has been given, and a second information and trial on same held. EX PARTE WYMAN, 5 C. C. C. 59, 34 N. B. R. 608.

163. **N.W.T. Act**—CONVICTION — DISTRESS—IMPRISONMENT.]—A statute provided that in case of non-payment of the penalty and costs immediately after conviction, the Justice might, in his discretion, levy the same by distress and sale, or might convict the person who was so convicted and made default, to any common gaol for a term not exceeding six months, with or without hard labor, unless the said penalty and costs should be sooner paid. N.W.T. Act, s. 99. A conviction under this statute ordered that the penalty and costs be levied by distress, and that in default of sufficient distress, the defendant be imprisoned for one month:— Held, that the imposition of imprisonment in default of distress was authorized by the Summary Convictions Act, R.S.C., c. 178, s. 67. THE QUEEN v. MATHEWSON, 1 Terr. L.R. 168.

164. **N.W.T. Act**—IMPRISONMENT — CERTIORARI—RETURN OF CONVICTION—AMENDMENT OF CONVICTION.]—Defendant was convicted under a statute which authorized, in default of payment of the penalty and costs, (1) distress, or (2) 6 months' imprisonment. The magistrate's minute directed 6 months' imprisonment, unless the fine and costs should be sooner paid. The magistrate filed with the proper officer a formal conviction which directed distress, and in default of distress 6 months' imprisonment. This conviction being obviously bad, inasmuch as (besides not according with the minute) three months is the limit for imprisonment for default or distress (Summary Convictions Act, s. 67, Reg. v. Mathewson), upon the issue of a certiorari the magistrate filed a new formal conviction, which accorded with the minute, except that there were added the words " (unless) the costs of conveying the defendant to the guard room are sooner paid."—Held, following Reg. v. Mathewson, that the first formal conviction was bad. Held, also, that the second formal conviction was also bad inasmuch as the statute under which the conviction was made did not authorize the imposing of the costs of conveying to gaol ; the words to that effect in the forms of the Summary Convictions Act being intended to be used only when expressly made applicable. Reg. v. Wright followed. Semple, per Richardson, J.: The Summary Convictions Act, s. 85 (as remodelled by 51 Vic. c. 45, s. 9), directing that the convicting magistrate shall trans-

mit the conviction to the proper officer "before the time when an appeal....may be heard, there to be kept by the proper officer among the records of the Court," and the magistrate having complied with this provision, by filing the first formal conviction, the second could not be considered. THE QUEEN v. HAMILTON, 1 Terr. L.R. 172.

See also ASSAULT — APPEAL — CASE STATED — CERTIORARI — EVIDENCE — GAMING — HABEAS CORPUS — INFORMATION — INTOXICATING LIQUORS — JUSTICE OF THE PEACE — SUMMARY TRIAL — SUMMONS — THEFT — VAGRANCY — WAIVER — WARRANT OF COMMITMENT.

CORONER.

1. **Coroner's Inquisition** — CRIMINAL COURT.]—A coroner's inquisition is a County record and a criminal court. REGINA v. HAMMOND, 1 C. C. C. 373, 29 O. R. 211.

2. **Coroner's Inquest**—DEPOSITION — IRREGULAR RETURN — USE OF AT TRIAL.] —Where there is no certificate that a deposition at a coroner's inquest has been read over the same is imperfect, and cannot be used as evidence, but when the signature of the witness has been proven, it may be used to test the memory or to contradict the witness. REX v. LAURIN, 5 C. C. C. 545.

3. **Coroner's Inquest** — DEPOSITION — ADMISSIBILITY AS EVIDENCE AT TRIAL.]— A deposition taken at a coroner's inquest is not admissible as evidence at the trial, though it may be used in cross-examination. Sec. 687 Criminal Code does not apply to such depositions. REX v. EDOUARD C. LAURIN, (No. 3), 5 C. C. C. 548.

4. **Inquest**—CORONER'S COURT — WARRANT.]—A coroner's court is a court of record and the coroner is a judge of a court of record. It is not essential that the coroner should issue his warrant for the purpose of an inquest. He may himself impanel a jury summoning them to attend by a verbal direction. DAVIDSON v. GARRETT, 5 C. C. C. 200.

5. **Inquest** — POST-MORTEM EXAMINATION — MEANING OF INQUEST.]—Unless otherwise provided by statute, there is an absolute rule which forbids the making of the post-mortem examination before the impanelling of the jury. Inquest includes all the proceedings down to and including the requisition. DAVIDSON v. GARRETT, 5 C. C. C. 200.

6. **Venire to Coroner** — WHERE SHERIFF DISQUALIFIED.]—The order of a Superior Court directing a coroner instead of the sheriff to summon a grand jury, need not shew upon its face everything necessary to warrant its being issued. REGINA v. MCGUIRE, 4 C. C. C. 12, 34 N. B. R. 430.

CORPORATION.

BRIDGE—REPAIR — MAINTENANCE — MANDAMUS — INDICTMENT — 46 Vic. ch. 18, sec. 535, (O).

1. An appeal from the judgment of Rose, J. (not reported) dismissing an application under 46 Vic. ch. 18, sec. 535, (O.), for a mandamus to compel the repair by the county of Haldimand of an existing bridge or the construction of a new one over the Oswego Creek, where it crosses the boundary line between the township of Moulton and Haldimand, by reason of the judges of this court being divided in opinion, was dismissed. Per Hagarty, C. J. O., and Osler, J. A.—Indictment was the appropriate remedy. The Court below had the right to grant the writ in its discretion, which was, however, properly exercised in refusing it. Per Burton and Patterson, J. A.— The duty under the statute is not the general obligation to keep highways and bridges in repair, but is a specific duty like that cast upon railway companies by their charters with respect to the restoration of roads or the building of bridges. The existence of liability to indictment does not of necessity exempt from compulsion by mandamus any party charged by stasute with a specific duty. Indictment would in this case be neither a specific nor an adequate remedy, and a mandamus should have been granted. The demand made upon the county council previous to the application was sufficient. Per Osler, J. A.—The demand was insufficient. Per Curiam — The county

council were liable for the non-repair of the bridge in question. IN RE THE TOWNSHIPS OF MOULTON AND CANBOROUGH AND THE COUNTY OF HALDIMAND, 12 A. R. 503.

2. **Convicting Manager for Sale of Liquor.**]—A magistrate has jurisdiction to convict a manager of an incorporated company for an offence under the Canada Temperance Act, where a clerk of the company under the manager's general directions sells intoxicating liquors in contravention of said Act. EX PARTE BAIRD, 3 C. C. C. 65, 34 N. B. R. 213.

3. **Criminal Liability of** — INTENT OR MALICE — NEGLIGENCE.] — A corporation cannot be made criminally liable for such acts as are spoken of as crimes in the more popular sense of the word, that is, crimes of which the essence is the personal criminal intent or malice or negligence carried to an extent that it amounts to wilfully incurring the risk of causing jury to others. REGINA v. GREAT WEST LAUNDRY CO., 3 C. C. C. 514 Man., 13 Man. L. R. 66, 20 Occ. N. 217.

4. **Director of** — CRIMINAL LIABILITY — MERE ACQUIESCENCE.]—A director of a Jockey Club is not liable as an aider or abettor or as keeper of a common gaming house, for merely acquiescing in the granting of a lease of the betting privileges of the race track even where the lease by the club was for a large sum of money. R. v. HENDRIE, 10 C. C. C. 298, 6 O. W. R. 1015, 11 O. L. R. 202.

5. **Indictment for Neglect to Perform Legal Duty.**]—An indictment will lie against a corporation for the consequences of omitting, without lawful excuse, to perform a legal duty. REGINA v. UNION COLLIERY COMPANY, 4 C. C. C. 400, 31 S. C. R. 81.

6. **Licensing of Foreign Co.** — DOMINION CHARTER — TERRITORIAL ORDINANCE — INTRA VIRES.]—The Legislative Assembly of the North-West Territories has power to pass an ordinance requiring the registration of a Joint Stock Company doing buisiness under a Dominion charter. R. v. MASSEY-HARRIS CO., 9 C. C. C. 25, 1 W. L. R. 45.

6. **License from Municipal Corporation** — TELEPHONE AND ELECTRIC LIGHT COMPANIES — INTERFERENCE BY SECOND LICENSEE WITH RIGHTS OF FIRST — R. S. O. ch. 157, sec.s 59, 70; 45 Vic. ch. 19, sec. 3, (O).—An interlocutory injunction having been granted to restrain defendants, who were carrying on business in partnership as an Electric Light Company under license from a municipal corporation, from running their lines in such a way as to interfere with the safe and efficient working of the business of the plaintiffs, an incorporated Telephone Company, also licensees of the corporation, under authority granted two years previously to the defendants' license :—Held, that, although the circumstance that the plaintiffs were in possession of the ground, and had their poles erected about two years before the defendants put up their poles, did not give them the exclusive possession or right to use the sides of the road on which they had placed their poles, yet, their possession being earlier than that of the defendants, the defendants had not the right to do any act interfering with or to the injury of the plaintiffs' rights :—Held, also, that independently of the provisions of R. S. O. ch. 157, secs. 59 and 70, as extended to Electric Light Companies, 45 Vic., ch. 19, sec. 3, (O.), the plaintiffs were entitled to relief on the general ground upon which protection and relief in cases of this kind are granted. Quære, whether defendants were liable to indictment. BELL TELEPHONE COMPANY v. BELLEVILLE ELECTRIC LIGHT CO., 12 O. R. 571.

7. **Street Railway** — COMMON NUISANCE — CODE SEC. 191-2.]—A corporation may be properly convicted of committing a common nuisance by making a practice of operating street cars reversely on a section of the track which is used by cars running in the opposite direction, where no fender, light or gong is used on the rear of such cars, thereby endangering the safety of the public. R. v. TORONTO RAILWAY CO., 10 C. C. C. 106.

8. **Summary Conviction Against.**] — A corporation cannot be dealt with by summary conviction, but must be proceeded against by indictment. Ex Parte Woodstock Electric Light Co., 4 C. C. C. 107 Contrary opinion held, howveer, in REGINA v. TORONTO RAILWAY CO., 2 C. C. C. 471, 26 A. R. 491.

9. **Whether can be Proceeded Against Summarily.**]—A charge of selling goods to which a false trade description is applied, against a corporation is a subject for indictment, and is not triable summarily before a magistrate. R. v. T. Eaton Co., 2 C. C. C. 252, 31 O. R. 276 29 O. R. 591.

See also Manslaughter — Punishment.

CORPUS DELICTI.

1. **Murder.**]—Once the fact of death is established circumstantial evidence can then be given to prove the identity of the remains, and also the identity of the person who caused the death. R. v. King, 9 C. C. C. 426, 1 W. L. R. 348, 576.

CORROBORATION.

See Evidence.

CORRUPT PRACTICE.

See Imprisonment—Jury — Personation.

COSTS.

1. **Against Informant.**] — Costs will be allowed against the informant where a summary trial has been prevented by a writ of prohibition directed to the magistrate who was acting without jurisdiction. R. v. T. Eaton Co., 2 C. C. C. 252, 31 O. R. 276, 29 O. R. 591.

2. **After Recognizance to Prosecutor** — Personal Liability of Commissioner of the Dominion Police.]—The Commissioner of the Dominion Police has, as such, no legal capacity to represent Her Majesty, and is personally liable for costs pursuant to Article 595 of the Criminal Code. In the absence of a tariff for cases arising under the provisions of Article 595 of the Criminal Code, the rule laid down in Article 835 by implication applies. Regina v. St. Louis, 1 C. C. C. 141.

3. **Amending Invalid Conviction on Certiorari.**]—Where upon certiorari proceedings, the original conviction was in excess of jurisdiction of the magistrate, but was amended on the return by the omission of the invalid part, no costs were granted against the applicant upon the discharge of the rule nisi, inasmuch as the certiorari proceedings were justified when launched. Regina v. McAnn, 3 C. C. C. 110, 4 B. C. R. 587.

4. **Appeal from Summary Conviction** — Act Respecting Frauds in Cheese Factories.]—The provisions of sections 879, 880 of the Criminal Code apply to and govern appeals under the Act respecting frauds in cheese factories, 52 Vict. c. 43, save as provided by sec. 9 of said Act; the Court has therefore jurisdiction to award costs and the amount of the costs to be awarded lies entirely with the Court and may be awarded in gross. No reference is made to any tariff, but one may be adopted by the judge to aid his discretion. The judge may award such sum as to him seems reasonable and his exercise of discretion in this regard cannot be reviewed. R. v. McIntosh, 2 C. C. C. 115, 28 O. R. 603.

5. **Appeal Enforceable in Same Manner as Penalty.**]—Where a prosecutor's appeal has been successful, the costs of the appeal may be allowed, and there is no distinction between penalty and costs so far as the methods of enforcement are concerned. The Queen v. Hawbolt, 4 C. C. C. 219, 33 N. S. R. 165.

6. **Appeal** — Bond Defective — Jurisdiction to Award Costs.]—Notwithstanding that the recognizance required by sec. 880 (c) Criminal Code be defective, and that the proper recognizance being a statutory condition precedent, the Court has jurisdiction to award costs when dismissing the appeal for such defect. Ex Parte Sprague, 8 C. C. C. 109, 36 N. B. R. 213.

7. **Appeal Dismissed for Defective Notice** — Code Sec. 881-884.]—At common law there was no provision for payment of costs in criminal cases; the award must be in pursuance of some statutory provision in that behalf. Sec. 884 of the Code applies to cases where the appeal is not prosecuted, or is abandoned according to law, and contemplates only

cases where appellant fails to proceed and has not abandoned his appeal according to law; it does not apply to a case where the appeal was dismissed through a defect in the notice of appeal. R. v. AH YIN, (No. 2) 6 C. C. C. 66.

8. **Attorney-General Should Decide Whether Crown Should Assume Expenses of an Indictment.**]—Whether the Crown should or should not assume the expense of an indictment being preferred, is a matter which the Attorney-General and not the Court should decide. EX PARTE HANNING, 4 C. C. C. 203.

9. **Certiorari Proceedings.**]—Costs of certiorari proceedings are not usually given where the conviction is amended and affirmed in the amended form. REGINA v. WHIFFEN, 4 C. C. C. 141.

10. **Certiorari** — JURISDICTION TO AWARD COSTS.]—On a motion to quash a conviction in a criminal matter, and not merely for a penalty imposed by or under Provincial legislation no jurisdiction is conferred on the High Court of Ontario to give costs to the applicant against the prosecutor, a magistrate. REX. v. BENNETT, 5 C. C. C. 456, 4 O. L. R. 205 (1902).

11. **Certiorari** — USUAL RULE.]—The usual rule on certiorari proceedings where a conviction is quashed, is not to award costs except in cases of some misconduct on the part of the justice or informant. REGINA v. BANKS, 2 Terr. L. R. 81, 1 C. C. C. 370.

12. **Certiorari** — PRACTICE IN NOVA SCOTIA.]—Where the magistrate and informant unsuccessfully oppose a motion for certiorari and the conviction is quashed, the accused is entitled to costs. R. v. SMITH, 2 C. C. C. 485, 31 N. S. R. 468.

13. **Certiorari Proceedings** — Motion to Quash Conviction not being Opposed, no Costs Allowed, on Terms that no Action be brought by Defendant. REGINA v. MCLEOD, 1 C.C. C. 10.

14. **Certiorari Proceedings** — SEC. 897 — COSTS AGAINST MAGISTRATE.]—Secs. 897 and 898 of the Criminal Code do not refer to costs awarded against a magistrate on certiorari proceedings but to costs awarded by the County General Sessions of the Peace on affirming or quashing a conviction or order on appeal to it. REGINA v. GRAHAM, 1 C. C. C. 405, 29 O. R. 193.

15. **Certiorari** — EXCESSIVE MILEAGE — NO GROUND FOR QUASHING CONVICTION.] —On motion for an order for a certiorari on the ground that the magistrate exceeded his jurisdiction by directing the defendant to pay costs in excess of those allowed by the tariff of fees under sec. 871 of the Criminal Code. Costs were taxed for travel in serving each witness though they all lived on the same route —Held, that even if the costs taxed in excess of what is authorized by the Code, the jurisdiction of the magistrate is not thereby affected, following ex parte Howard, 32 N. B. R. 237. EX PARTE RAYWORTH, 2 C. C. C. 230, 34 N. B. R. 74.

16. **Commitment and Conveying to Gaol.**]—In a warrant of commitment for the non-payment of a penalty, the costs of commitment and conveying to gaol, must be ascertianed and set forth. REGINA v. MURDOCK, 4 C. C. C. 82, 27 A. R. 443.

17. **Commitment when Improperly Included in Conviction to be Struck out on Certiorari.**]—Where a conviction for unlawfully keeping intoxicating liquor for sale, contrary to the provisions of the second part of the Canada Temperance Act, imposed in default of distress, imprisonment for the space of 60 days, unless the penalty and costs, and the costs and charges of such distress and of the commitment, and of conveying defendant to gaol, were sooner paid, if costs of commitment were improperly in the conviction, they are to be treated as mere surplusage and can be struck out on certiorari. REGINA v. DOHERTY, 3 C. C. C. 505, 32 N. S. R. 235.

18. **Criminal Libel** — TAXATION OF COSTS.]—Plaintiff 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 :—Held, on a summons for stay proceedings, that plaintiff should not be allowed to pursue both remedies at

once, but as in the other action there was no appeal, plaintiff allowed to proceed on terms. NICHOL v. POOLEY, 9 B. C. R. 21, 6 C. C. C. 13.

19. **Criminal Libel** — NOLLE PROSEQUI — RIGHT TO COSTS.]—Upon an indictment for libel the Attorney-General under 732 of the Criminal Code entered a nolle prosequi and thereupon the accused was discharged. The discharge of the accused was a judgment entitling him to his costs under sec. 833 of the Criminal Code. REX. v. BLACKLEY, 8 C. C. C. 405.

20. **Improper Award Under Conviction.**]—Conviction held to be objectionable where costs were awarded to the justice instead of the informant. REGINA v. ROCHE, 4. C. C. C. 64, 32 O. R. 20.

21. **Jurisdiction to Award.**]—A magistrate on allowing a defendant out on a suspended sentence, has power to order the payment of costs of the prosecution, and where not provided to be paid by instalments, they are payable forthwith. R. v. MCLELLEN, 10 C. C. C. 1.

22. **Jurisdiction to Award** — CRIMINAL CODE, SEC. 884.]—An appeal coming in to be heard at a sittings of the Court other than the one for which notice was given, there is no jurisdiction to award costs under sec. 884 of the Criminal Code. MCSHADDEN v. LACHANGE, 5 C. C. C. 43.

23. **Municipal Corporation** — POLICE OFFICER PROSECUTING.]—Where a prosecution for an offence against a municipal by-law is taken in the name of a police constable, upon whose information the summons issued, costs in connection with any proceedings subsequent to the dismissal of an appeal against a conviction for such offence, cannot be awarded in favor of the municipal corporation. BOTHWELL v. BURNSIDE, 4 C. C. C. 450, 31 O. R. 695.

24. **Nuisance.**]—Upon an application for a rule to tax the costs of proceedings on an indictment for nuisance in obstructing a highway, under 6 & 6 Will. & Mary, c. 33, and that they should be allowed to a particular person, the Court refused the rule. A side bar rule is granted in England to tax these costs as a matter of course, but this application went further. REGINA v. GORDON, REGINA v. ROBSON, 8 C. P. 58.

25. **Quashing Conviction.**]—Costs are seldom granted when a conviction is quashed unless it appears the magistrate has been guilty of conduct which would call for the animadversion of the Court. REGINA v. PETERSKY, 1 C. C. C. 91, 5 B. C. R. 549.

26. **Quashing Conviction.**]—The practice is not to give costs on quashing conviction. REGINA v. COULSON, 1 C. C. C. 114, 24 O. R. 246.

27. **Quashing Conviction** — PRACTICE.]—Practice is not to give costs on quashing conviction but same may be recovered in action where no order for protection made. REGINA v. SOMERS, 1 C. C. C. 47, 24 O. R. 244.

28. **Summary Conviction.**]—There is no general power to award costs upon a conviction under an Ontario statute, where such power is not given by the statute itself : and therefore where on a conviction under s. 162 R. S. O. 1877, c. 174, for attempting to obtain information at a polling place as to the candidate for whom a voter was about to vote, costs were awarded against the defendant, the conviction was ordered to be quashed : —Held, also, that there was no power to amend the conviction in this respect. REGINA v. LENNON, 44 U. C. R. 456.

29. **Summary Conviction** — APPEAL.]—On an appeal to a county court Judge from a summary conviction under the Act to provide against frauds in the supplying of milk to cheese, butter and condensed milk factories (52 Vict. c. 43, s. 9), the Judge has the same power to award costs as the sessions of the peace under s.-s. 879-880 of the Criminal Code, 1892. Under the Criminal Code, s. 880, the court may, on appeal, award such costs, including solicitor's fee, as it may deem proper, and there is no power in the High Court to review such discretion. REGINA v. MCINTOSH, 28 O. R. 603.

30. **Summary Conviction** — R. S. O. c. 120 — POWER TO AWARD COSTS.]—The court has jurisdiction to award costs against the magistrate and private prosecutor on quashing a summary conviction made under the Trespass Act, R. S. O. 1897, c. 120. Such jurisdiction is conferred by section 119 of the Judicature Act. REX. v. MANCION, 8 C. C. C. 218, 8 O. L. R. 24.

31. **Summary Conviction** — COSTS OF DISTRESS AND CONVEYANCE TO GAOL.]—The costs of distress and conveyance to gaol on a summary conviction, are not in the discretion of the justice but must be included in the formal conviction. REGINA v. VAN TASSEL, No. 2, 5 C. C. C. 133, 34 N. S. R. 79.

32. **Taxation of** — PRIVATE PROSECUTOR BOUND OVER TO PROSECUTE.]—Where a private prosecutor upon the discharge by the examining justice of the peace of an accused charged with theft, at his own request was bound over to prosecute the charge and the accused was acquitted at the trial, and where such private prosecutor was condemned to pay the costs of the accused at the preliminary enquiry and at the trial, such costs where there is no tariff of fees for criminal proceedings, will be taxed in virtue of section 835 in accordance with the lowest scale in civil suits in the Superior Court. Rex. v. GOUILLIOULD, 7 C. C. C. 432.

33. **Where not Ascertained and Severable from rest of Conviction Prisoner Not Entitled to Discharge.**]—A prisoner convicted of a corrupt practice under the Liquor License Act, 1902, Ontario, and sentenced to both imprisonment and the payment of penalty and costs, is not entitled to be discharged because the conviction does not fix the costs. The payment of costs is severable from the other part of the conviction. REX. v. CARLISLE, 7 C. C. C. 470, 6 Ont. L. R. 718, 23 Occ. N. 321.

See also CERTIORARI — CONVICTION.

COUNTERFEITING.

1. **Admissibility of Evidence Showing Guilty Knowledge.**]—Upon an indictment charging possession of a counterfeit coin, an objection to the Crown introducing evidence of the prisoner having genuine trade dollars on his person when arrested, and which he had tried to pass off as worth one dollar when their real value was sixty cents, was sustained on the ground that guilty knowledge would have to be established by proving that the trade dollars were counterfeit. REGINA v. BENHAM, 4 C. C. C. 63, Q R. 8, Q. B. 448.

2. **Counterfeit Tokens of Value** — NO ORIGINAL — CRIMINAL CODE 479]—A paper which resembles and intends to resemble United States Government Notes or Treasury Notes of the United States of America is a counterfeit or what purports to be a counterfeit token of value under Criminal Code section 479, although there is no original of its description. REGINA v. COREY, 1 C. C. C. 161, 33 N. R. 81.

COUNTY.

Vessel Passing Through.]—By the Act 12 Vict. c. 30, s. 34, where any felony or misdemeanor is committed on any person on board any vessel employed on any voyage on any navigable river, etc., such offence may be dealt with, tried, determined and punished in any county through any part of which such vessel shall have passed in the course of the passage in which the offence was committed, in the same manner as if it had actually been committed in such county. —Held, in an indictment for an assault committed on board a steamboat, on its passage between A. and B., but before it came within the county of B., that it was sufficient to allege that the assault took place within the county of B. REGINA v. WEBSTER, 1 All. N. B. R. 589.

COUNTY JUDGE'S CRIMINAL COURT.

See SPEEDY TRIAL.

COURT.

1. **Courts of Oyer and Terminer**—POWER OF GOVERNOR TO ISSUE COMMISSIONS.]—The prisoner was tried and found guilty at the sittings of the Court of Oyer and Terminer and general gaol delivery held at Victoria under the "Assize Court Act, 1885," and presided over by Gray, J., a Judge of the Supreme Court of British Columbia, and a justice named in a commission of Oyer and Terminer and general gaol delivery issued by the Lieutenant-Governor :—Held, (1) that assuming the Lieutenant-Governor's commission to be void, the Court was properly constituted

without commission, under s. 14 "Judicature Act, 1879," and the "Assize Court Act," 1885. Held, (2) Following McLean's case, that the commission of Oyer and Terminer and general gaol delivery was sufficient, and that the Lieutenant-Governor had power to issue it under s. 129, B. N. A. Act, 1867. Held, (3) that the commission was not exhausted by reason of the justices therein named having held under it Courts of Oyer and Terminer in other districts of the Province. ROBERT E. SPROULE, plaintiff in error v. THE QUEEN, defendant in error, 1 B. C. R., pt. II., 219.

2. **County Court of New Brunswick.**]—A Judge of the County Court of New Brunswick has jurisdiction to try the offence of attempting to have carnal knowledge of a girl under fourteen, even though he considered the offence disclosed an attempt to commit rape in which charge jurisdiction is taken away by section 540 of the Criminal Code. R. v. WRIGHT, 2 C. C. C. 83.

3. **Court of Record** — WHAT IS A.] — Held, that a police court is not a Court of Record within the meaning of the Ontario Habeas Corpus Act R. S. O. 1897, Cap. 83; that the statute did not contemplate any Courts of record inferior to, or less principal than the High Court of Justice. R. v. GIBSON, 2 C. C. C. 302, 29 O. R. 660.

4. **Execution of Orders** — INTERESTED OFFICIALS.]—The orders of the court should be executed by officers entirely free from interest, bias, or prejudice, and it appearing that three officers had laid complaint under the Canada Temperance Act, and as such being liable for costs and at a risk of damages, the rule absolute for certiorari was granted. EX PARTE MCCLEAVE, 5 C. C. C. 115, 35 N. B. R. 100, 20 Occ. N. 89.

CRIMINAL CODE.

1. **Criminal Code** — EFFECT OF — ON PROVINCIAL STATUTES — PRIOR TO CONFEDERATION.]—The Habeas Corpus Act (Que.) having certain provisions respecting a person committed for a felony, and the Criminal Code having abolished the distinction between felony and misdemeanor the Act applies to all cases, whether felonies or misdemeanors, prior to the enactment of the Criminal Code. REGINA v. H. B. CAMERON, 1 C. C. C. 169.

2. **Persons Designata** — OFFICERS DE FACTO AND DE JURE — CHIEF CONSTABLE — COMMON GAMING HOUSE — CONFISCATION OF GAMING INSTRUMENTS, MONEYS, ETC. — EVIDENCE — THE CANADA EVIDENCE ACT, 1893, s.-s. 2, 3, 20 and 21.] —Section 575 of the Criminal Code, authorizing the issue of a warrant to seize gaming implements on the report of "the chief constable or deputy chief constable" of a city or town, does not mean that the report must come from an officer having the exact title mentioned, but only from one exercising such functions and duties as will bring him within the designation used in the statute. Therefore, the warrant could properly issue on the report of the deputy high constable of the City of Montreal. Girouard, J., dissenting—The warrant would be good if issued on the report of a person who filled de facto the office of deputy high constable though he was not such in de jure. In an action to revendicate the moneys so seized, the rules of evidence in civil matters prevailing in the province would apply, and the plaintiff could not invoke "The Canada Evidence Act, 1893," so as to be a competent witness in his own behalf in the Province of Quebec. Per Strong, C.J. A judgment declaring the forfeiture of money so seized cannot be collaterally impeached in an action of revendication. O'NEILL v. ATTORNEY-GENERAL OF CANADA, 26, S. C. R. 122.

3. **Polygamy** — INDIAN MARRIAGE.] — 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 section 278 of the Criminal Code. THE QUEEN v. "BEAR'S SHIN BONE," 4 Terr. L. R. 173.

Sec. 3 (t) discussed in Regina v. Great West Laundry Co., 3 C.C.C. 514, 13 Man. L. R. 66.
" 3 (u) " Re Goodspeed, 7 C. C. C. 240, 36 N. B. R. 91.
" 7 " R. v. Sellors, 9 C. C. C. 153.
" 7 " R. v. Quinn, 10 C. C. C. 412.
" 10 " Reg. v. Hartlen, 2 C. C. C. 12, 30 N. S. R. 317.
" 11 " Rex v. Phinney, 7 C. C. C. 280, 36 N. S. R. 288.
" 18 " Sleeth v. Hurlbert, 3 C. C. C. 197; 25 S. C. R. 620.
" 21 " Gaul v. Township of Ellice, 6 C. C. C. 15; 3 O. L. R. 438.
" 22 " R. v. Cloutier, 2 C. C. C. 43; 12 Man. L. R. 183.
McGuinness v. Dafoe, 3 C. C. C. 139; 27 O. R. 117.
Rex v. Sabeans, 7 C. C. C. 498.
" 23 " McGuinness v. Dafoe, 3 C. C. C. 139; 27 O. R. 117.
" 25 " Rex v. Sabeans, 7 C. C. C. 498.
" 55 " Reg. v. Robinson, 7 C. C. C. 52.
" 61 " R. v. Hodge, 2 C. C. C. 350; 12 Man. L. R. 319.
R. v. Campbell, 2 C. C. C. 357.
R. v. Harkness, 10 C. C. C. 199; 10 O. L. R. 555.
R. v. Harkness, (No. 1) 10 C. C. C. 199; 10 O. L. R. 555.
Reg. v. Holley, 4 C. C. C. 510.
" 61 (b) " Reg. v. Roy, 3 C. C. C. 472; Q. R. 9, Q. B. 312.
" 89 " R. v. Pike, 2 C. C. C. 314; 12 Man. L. R. 314.
" 104 " R. v. Jack, 7 B. C. R. 19; 5 C. C. C. 304.
" 138 " Reg. v. Holley 4 C. C. C. 510.
Re E. J. Parke, 3 C. C. C. 122.
" 144 " Reg. v. Crossen, 3 C. C. C. 152; 19 C. L. T. 347.
Rex v. Finlay, 4 C. C. C. 539; 13 Man. L. R. 383.
Rex v. Nelson, 4 C. C. C. 461; 8 B. C. R. 110.
Rex v. Jack, (No. 2) 5 C. C. C. 304; 9 B. C. R. 19.
Rex v. Carmichael, 7 C. C. C. 167.
" 144 (2) " Rex v. Harron, 7 C. C. C. 543; 6 O. L. R. 668.
Rex v. Rapay, 7 C. C. C. 170; 5 Terr. L. R. 367.
Rex v. Shand, 8 C. C. C. 45; 7 O. L. R. 190.
" 145 " Rex v. Burns, 4 C. C. C. 330; 1 O. L. R. 341.
Drew v. The King, 6 C. C. C. 424; 33 S. C. R. 228.
" 147 " Reg. v. Skepton, 4 C. C. C. 467; 18 C. L. T. 205.
" 148 " Re Collins, 10 C. C. C. 71.
" 171 " R. v. Wasyl Kapij, 9 C. C. C 186; 15 Man. L. R. 186.
" 173 " R. v. Lavoie, 6 C. C. C. 39; Q. R. 21, S. C. 128.
" 174 " Reg. v. Hartlen, 2 C. C. C. 12; 30 N. S. R. 317.
" 176 " Reg. v. Garneau, 4 C. C. C. 69; Q. R. 8, Q. B. 447.
" 179 " R. v. Beaver, 9 C. C. C. 415; 9 O. L. R. 418.
" 181 " R. v. Vahey, 2 C. C. C. 258.
" 185 " R. v. Gibson, 2 C. C. C. 305; 29 O. R. 660.
" 189 " R. v. Clark, 9 C. C. C. 125.
" 191 " R. v. Toronto R. W. Co., 4 C. C. C. 4.
R. v. Toronto Ry. Co., 10 C. C. C. 106.
" 192 " Reg. v. Union Colliery Co., 3 C. C. C. 523; 7 B. C. R. 247.
R. v. Union Colliery Co., 4 C. C. C. 400; 31 S. C. R. 81.
R. v. Toronto Railway Co., 10 C. C. C. 106.
" 195 " R. v. Mannix, 10 C. C. C. 151; 10 O. L. R. 303.
R. v. Bougie, 3 C. C. C. 487.
R. v. Roy, 3 C. C. C. 472; Q. R. 9, Q. B. 312.
R. v. Young, 6 C. C. C. 43; 14 Man. L. R. 58.
R. v. Shepherd, 6 C. C. C. 463.
R. v. Osberg, 9 C. C. C. 180; 15 Man. L. R. 147.
" 196 " Rex v. Fortier, 7 C. C. C. 417.
Rex v. James, 7 C. C. C. 196; 6 O. L. R. 37.
R. v. Flynn, 9 C. C. C. 550; 1 W. L. R. 388.
R. v. Mah Kee, 9 C. C. C. 47; 1 W. L. R. 37.
" 196 (a) " R. v. Saunders, 3 C. C. C. 495; 11 Man. L.R . 559.

Sec.196(b)discussed in R. v. Petrie, 3 C. C. C. 439; 7 B. C. R. 176.
" 197 " R. v. Hendrie, 10 C. C. C. 298; 11 O. L. R. 202.
R. v. Smallpiece, 7 C. C. C. 556.
" 198 " Reg. v. Bougie, 3 C. C. C. 487.
Ex Parte John Cook, 3 C. C. C. 72; 4 B. C. R. 18.
Reg. v. Petrie, 3 C. C. C. 439; 7 B. C. R. 176.
Reg. v. Roy, 3 C. C. C. 472; Q. R. 9, Q. B. 312.
Reg. v. Saunders, 3 C. C. C. 495; 11 Man. L. R. 559.
Reg. v. Keeping, 4 C. C. C. 494; 34 N. S. R. 442.
Reg. v. Spooner, 4 C. C. C. 209; 32 O. R. 451.
R. v. Shepherd, 6 C. C. C. 463.
R. v. Young, 6 C. C. C. 43; 14 Man. L. R. 58.
Rex v. Fortier, 7 C. C. C. 417.
Rex v. James, 7 C. C. C. 196; 6 O. L. R. 37.
R. v. Mah Kee, 9 C. C. C. 47; 1 W. L. R. 37.
R. v. Osberg, 9 C. C. C. 180; 15 Man. L. R. 147.
R. v. Smith, 9 C. C. C. 338.
R. v. Hendrie, 10 C. C. C. 298; 11 O. L. R. 202.
" 199 " R. v. Ah Jim, 10 C. C. C. 126.
R. v. Ah Yin, 6 C. C. C. 63.
" 201 " Reg. v. Dowd, 4 C. C. C. 170; Q. R. 17, S. C. 67.
Rex v. Beckwith, 7 C. C. C. 450.
R. v. Harkness, 10 C. C. C. 199; 10 O. L. R. 555.
B. C. Stock Exchange v. Irving, 8 B. C. R. 186.
" 204 " Rex v. Smallpiece, 7 C. C. C 556.
R. v. Hendrie, 10 C. C. C. 298; 11 O. L. R. 202.
" 205 " Brault v. St. Jean-Baptiste Ass. of Montreal, 4 C. C. C. 284; 30 S. C. R. 598.
R. v. Lorrain, 2 C. C. C. 144; 28 O. R. 123.
R. v. Johnson, 6 C. C. C. 51; 14 Man. L. R. 27.
Rex v. Johnston, 7 C. C. C. 525.
" 206 " R. v. Newcomb, 2 C. C. C. 255.
" 207 " Reg. v. St. Clair, 3 C. C. C. 551; 27 A. R. 308.
Reg. v. Spooner, 4 C. C. C. 209; 32 O. R. 451.
R. v. Mercier, 6 C. C. C. 47.
R. v. Kneeland, 6 C. C. C. 81; Q. R. 11, K. B. 85.
H. v. H., 6 C. C. C. 163.
Rex v. McCormack, 7 C. C. C. 135; 9 B. C. R. 497.
R. v. Smith, 9 C. C. C. 338.
" 207 (a) " R. v. Riley, 2 C. C. C. 128.
" 207 (j) " Rex v. Roberts, 4 C. C. C. 253; 21 Occ. N. 314.
Rex v. Keeping, 4 C. C. C. 494; 34 N. S. R. 442.
" 207 (1) " R. v. Riley, 2 C. C. C. 128.
R. v. Rehe, 1 C. C. C. 63.
R. v. Collette, 10 C. C. C. 286.
" 208 " Rex v. Keeping, 4 C. C. C. 494; 34 N. S. R. 442.
Rex v. Roberts, 4 C. C. C. 253; 21 Occ. N. 314.
Rex v. McCormack, 7 C. C. C. 135; 9 B. C. R. 497.
R. v. Smith, 9 C. C. C. 338.
R. v. McGregor, 10 C. C. C. 313.
" 209 " Rex v. Brooks, 9 B. C. R. 13.
Rex v. Lewis, 7 C. C. C. 261; 6 O. L. R. 132.
Reg. v. Coventry, 3 C. C. C. 541.
" 210 " Reg. v. Coventry, 3 C. C. C. 541.
Rex v. Lewis, 7 C. C. C. 261; 6 O. L. R. 132.
Rex v' Brooks, 9 B. C. R. 13.
R. v. Holmes, 2 C. C. C. 132; 29 O. R. 362.
Reg. v. Robinson, 1 C. C. C. 28; 28 O. R. 407.
" 210 (2) " Reg. v. Bowman, 3 C. C. C. 410; 31 N. S. R. 403.
R. v. McIntyre, 3 C. C. C. 413; 31 N. S. R. 422.

Sec. 211 discussed in R. v. Coventry, 3 C. C. C. 541.
" 213 " R. v. Toronto Railway Co., 10 C. C. C. 106.
R. v. Union Colliery Co., 4 C. C. C. 400; 31 S. C. R. 81.
R. v. Union Colliery Co., 3 C. C. C. 523; 7 B. C. R. 247.
R. v. Toronto Railway Co., 4 C. C. C. 4.
R. v. Great West Laundry Co., 3 C. C. C. 514; 13 Man. L. R. 66.
" 220 " R. v. Great West Laundry Co., 3 C. C. C. 514; 13 Man. L. R. 66.
" 227 " Rex v. Higgins, 7 C. C. C. 68; 36 N. B. R. 18.
Rex v. Louie, 7 C. C. C. 347; 10 B. C. R. 1.
R. v. Fouquet, 10 C. C. C. 255.
" 229 " Reg. v. Brennan, 4 C. C. C. 41; 27 O. R. 549.
" 230 " R. v. Machekequonabe, 2 C. C. C. 138; 28 O. R. 309.
R. v. Fouquet, 10 C. C. C. 255.
" 241 " Rex v. Hill, 7 C. C. C. 38; 36 N. S. R. 240.
R. v. Slaughenwhite, 9 C. C. C. 53; 37 N. S. R. 382.
Slaughenwhite v. R., 9 C. C. C. 173; 35 C. S. C. R. 607.
" 242 " Rex. v. Hill, 7 C. C. C. 38; 36 N. S. R. 240.
R. v. Slaughenwhite, 9 C. C. C. 53; 37 N. S. R. 382.
Slaughenwhite v. R., 9 C. C. C. 173; 35 C. S. C. R. 607.
Reg. v. Dupont, 4 C. C. C. 566.
Rex v. Hostetter, 7 C. C. C. 221; 5 Terr. L. R. 363.
" 243 " Reg. v. Dupont, 4 C. C. C. 566.
" 252 " R. v. Union Colliery Co., 3 C. C. C. 523; 7 B. C. R. 247.
R. v. Union Colliery Co., 4 C. C. C. 400; 31 S. C. R. 81.
" 259 " Rex v. Cameron, 4 C. C. C. 385.
Reg. v. Graham, 3 C. C. C. 22; 31 O. R. 77.
R. v. Barron, 9 C. C. C. 196.
" 260 " Reg. v. Hartlen, 2 C. C. C. 12; 30 N. S. R. 317.
" 261 " Rex v. Cameron, 4 C. C. C. 385.
" 262 " Rex. v. Hostetter, 7 C. C. C. 221; 5 Terr. L. R. 363.
Reg. v. Archibald, 4 C. C. C. 159.
" 263 " Rex v. Sabeans, 7 C. C. C. 498.
R. v. Preston, 9 C. C. C. 201; 11 B. C. R. 159.
" 265 " R. v. Hawes, 6 C. C. C. 238.
Rex v. Coolen, 7 C. C. C. 522; 36 N. S. R. 510.
R. v. Edwards, 2 C. C. C. 97; 29 O. R. 451.
" 266 " Reg. v. Riendeau, 3 C. C. C. 293; Q. R. 9, Q. B. 147.
Rex v. Riendeau, 4 C. C. C. 421.
R. v. Riopel, 2 C. C. C. 225.
" 267 " Reg. v. Graham, 3 C. C. C. 22; 31 O. R. 77.
R. v. Riopel, 2 C. C. C. 225.
" 268 " R. v. Wright, 2 C. C. C.
" 269 " R. v. Riopel, 2 C. C. C. 225.
R. v. Preston, 9 C. C. C. 201; 9 B. C. R. 159.
Rex v. Cameron, 4 C. C. C. 385.
" 270 " R. v. Wright, 2 C. C. C. 83.
" 272 " Reg. v. Hamilton, 4 C. C. C. 251.
" 273 " Rex v. Holmes, 9 B. C. R. 294.
" 275 " Special Case, 1 C. C. C. 172.
Rex v. Woods, 7 C. C. C. 226; 6 O. L. R. 41.
R. v. Sellars, 9 C. C. C. 153.
" 276 " Special Case, 1 C. C. C. 172.
" 278 " R. v Bear's Shin Bone, 3 C. C. C. 329; 4 T. L. R. 173.
" 283 " R. v. Blythe, 1 C. C. C. 263; 4 B. C. R. 276.
" 284 " Re Lorenz, 9 C. C. C. 158.
" 285 " R. v. Cameron, 2 C. C. C. 173.
" 302 " Rex v. Young, 4 C. C. C. 580.
" 303 " Rex v. Beauvais, 7 C. C. C. 494.
" 305 " R. v. Lyon, 2 C. C. C. 242; 29 O. R. 497.
Re Gross, 2 C. C. C. 67; 25 A. R. 83.

Sec.		Case
Sec. 305	discussed in	Ex Parte Seitz, 3 C. C. C. 127; 8 Que. Q. B. 392.
		Ex Parte Seitz, 3 C. C. C. 54; Q. R. 8, Q. B. 345.
		Reg. v. Collyns, 4 C. C. C. 572.
		Reg. v. Leete, 7 C. C. C. 301.
		Rex v. Phinney, 7 C. C. C. 280; 36 N. S. R. 288.
		Reg. v. Slavin, 7 C. C. C. 175; 35 N. B. R. 388.
		Rex v. Beauvais, 7 C. C. C. 494.
" 306	"	R. v. Hollingsworth, 2 C. C. C. 293; 4 Terr. L. R. 146.
" 308	"	R. v. Breckenridge, 7 C. C. C. 116; Q. R. 12, K. B. 474.
" 308 (2)	"	Reg. v. Unger, 5 C. C. C. 270; 14 Occ. N. 294.
" 311	"	Ex Parte Seitz, 3 C. C. C. 127; 8 Que. Q. B. 392.
		Ex Parte Seitz, 3 C. C. C. 54; Q. R. 8, Q. B. 345.
" 324	"	R. v. Ryan, 9 C. C. C. 347; 9 O. L. R. 137.
" 326 (c)	"	Rex v. Trepanier, 4 C. C. C. 259; Q .R. 10, K. B. 222.
" 331	"	Reg. v. Collyns, 4 C. .C C. 572.
		Reg. v. Brewster, 4 C. C. C. 34; 2 Terr. L. R. 353, 377.
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" 475	"	Reg. v. Benham, 4 C. C. C. 63; Q. R. 8, Q. B. 448.
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" 601	"	Reg. v. J. Gibson, 3 C. C. C. 451; 29 N. S. R. 4.
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" 784 (3) "	Rex v. Nelson, 6 C. C. C. 461; 8 B. C. R. 110.
" 785 "	Reg. v. Conlin, 1 C. C. C. 41; 29 O. R. 28.
	Reg. v. Archibald, 4 C. C. C. 159.
	Rex. v. Burns, 4 C. C. C. 330; 1 O. L. R. 341.
	Rex v. Cameron, 6 C. C. C. 385.
	Rex v. Keeping, 4 C. C. C. 494; 34 N. S. R. 442.
	Reg. v. Randolph, 4 C. C. C. 165; 32 O. R. 212.
	R. v. Hayward, 6 C. C. C. 399; 5 O. L. R. 65.
	R. v. Hawes, 6 C. C. C., 238.
	R. v. Bowers, 6 C. C. C. 264.
	Rex v. Ridehaugh, 7 C. C. C. 340; 14 Man. L. R. 434.
	Rex v. J. Coolen, 7 C. C. C. 522; 36 N. S. R. 510.
	Rex v. Conway, 7 C. C. C. 129.
	Rex v. Breckenridge, 7 C. C. C .116; Q. R. 12, K. B. 474.
" 785 (3) "	Rex v. Nelson, 4 C. C. C. 461; 8 B. C. R. 110.
" 786 "	Reg. v. Crossen, 3 C. C. C. 152; 19 C. L. T. 347.
	Reg. v. Hawes, 4 C. C. C. 529; 33 N. S. R. 389.
	R. v. Shepherd, 6 C. C. C. 463.
	Rex v. Carmichael, 7 C. C. C. 167.
	Rex v. Conway, 7 C. C. C. 129.
	R. v. Ridehaugh, 7 C. C. C. 340; 14 Man. L. R. 434.
	R. v. Walsh & Lamont, 8 C. C. C. 101; 7 O. L. R. 149.
	R. v. Ames, 10 C. C. C. 52; 5 Ter. L. R. 492.
	Rex v. Jack, 9 B. C. R. 19; 8 B. C. R. 110.
" 787 "	R. v. Randolph, 4 C. C. C. 165; 32 O. R. 212.
" 788 "	Reg. v. Bougie, 3 C. C. C. 487.
	Reg. v. Burtress, 3 C. C. C. 536; 20 Occ. N. 368.
	Reg. v. Archibald, 4 C. C. C. 159.
	Rex v. Roberts, 4 C. C. C. 253; 21 Occ. N. 314.
	Reg. v. Spooner, 4 C. C. C. 209; 32 O. R. 451.
" 789 "	R. v. Bowers, 6 C. C. C. 264.
" 791 "	Ex Parte J. Cook, 3 C. C. C. 72; 4 B. C. R. 18.
	Rex v. Burns, 4 C. C. C. 323; 1 O. L. R. 336.
	Rex. v. Burns, 4 C. C. C. 330; 1 O. L. R. 341.
" 797 "	Rex v. Burns, 4 C. C. C. 330; 1 O. L. R. 341.
" 798 "	Reg. v. St. Clair, 3 C. C. C. 551; 27 A. R. 308.
	Rex v. White, 4 C. C. C. 430; 34 N. S. R. 436.
" 799 "	Rex v. Burns, 4 C. C. C. 330; 1 O. L. R. 341.
	Rex v. Cameron, 4 C. C. C. 385.
" 800 "	R. v. Gibson, 2 C. C. C. 305; 29 O. R. 660.
	Reg. v. Burtress, 3 C. C. C. 536; 20 Occ. N. 368.
	Rex v. White, 4 C. C. C. 430; 34 N. S. R. 436.
	R. v. Randolph, 4 C. C. C. 165; 32 O. R. 212.
	R. v. Ames, 10 C. C. C. 52; 5 Ter. L. R. 492.

Sec.		Case
Sec. 801	discussed in	R. v. Ashcroft, 2 C. C. C. 387; 4 Ter. L. R. 119.
		R. v. Monaghan, 2 C. C. C. 488; 5 Ter. L. R. 495.
" 808	"	Reg. v. Egan, 1 C. C. C. 112; 11 Man. L. R. 134.
		Reg. v. Bougie, 3 C. C. C. 487.
" 833	"	Nichol v. Pooley, 9 B. C. R. 21; 9 B. C. R. 363.
" 835	"	Rex v. Gouilliould, 7 C. C. C. 432.
		Nichol v. Pooley, 9 B. C. R. 21, 363.
" 838	"	Ex Parte MacMichael, 7 C. C. C. 549.
" 839	"	R. v. Robt. Simpson Co., 2 C. C. C. 275; 28 O. R. 231.
" 840	"	R. v. Edwards, 2 C. C. C. 97; 29 O. R. 451.
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" 841	"	R. v. Edwards, 2 C. C. C. 97; 29 O. R. 451.
" 842	"	Reg. v. Ettinger, 3 C. C. C. 387; 32 N. S. R. 176.
		Ex Parte White, 3 C. C. C. 94; 34 N. B. R. 333.
" 843	"	Reg. v. Ettinger, 3 C. C. C. 387; 32 N. S. R. 176.
		R. v. McDonald, 3 C. C. C. 287; 29 N. S. R. 35.
		Re Barron, 4 C. C. C. 465.
" 845	"	Reg. v. McDonald, 3 C. C. C. 287; 29 N. S. R. 35.
		Bell v. Parent, 7 C. C. C. 465; Q. R. 23, S. C. 235.
		Simpson v. Lock, 7 C. C. C. 294.
		R. v. Austin, 10 C. C. C. 34; 1 W. L. R. 571.
" 846	"	Rex v. McCormack, 7 C. C. C. 135; 9 B. C. R. 497.
" 847	"	Bell v. Parent, 7 C. C. C. 465; Q. R. 23, S. C. 235.
		Simpson v. Lock, 7 C. C. C. 294.
" 850	"	R. v. McGregor, 2 C. C. C. 410; 26 O. R. 115.
" 853	"	Ex Parte Doherty, 1 C. C. C. 84; 33 N. B. R. 15.
		Ex Parte Donovan, 3 C. C. C. 286; 32 N. B. R. 374.
		Procter v. Parker, 3 C. C. C. 374; 12 Man. L. R. 528.
		Ex Parte Woodstock Electric Light Co., 4 C. C. C. 107, 4 N. B. R. 460.
" 855	"	R. v. Doherty, 3 C. C. C. 505; 32 N. S. R. 235.
" 856	"	Ex Parte Woodstock Elec. Lght Co., 4 C.C.C. 107; 34 N.B.R. 460.
" 857	"	R. v. Quinn, 2 C. C. C. 153.
		R. v. Doherty, 3 C. C. C. 505; 32 N. S. R. 235.
		Procter v. Parker, 3 C. C. C. 374; 12 Man. L. R. 528.
" 859	"	Reg. v. Burtress, 3 C. C. C. 536; 20 Occ. N. 368.
		Rex v. Rawding, 7 C. C. C. 436.
" 864	"	R. v. Edwards, 2 C. C. C. 97; 29 O. R. 451.
" 866	"	Miller v. Lea, 2 C. C. C. 282; 25 A. R. 428.
		Clermont v. Legace, 2 C. C. C. 1.
" 870	"	R. v. Power, 6 C. C. C. 378.
" 871	"	Ex Parte Rayworth, 2 C. C. C. 230; 34 N. B. R. 74.
		McGillivray v. Muir, 7 C. C. C. 360; 6 O. L. R. 154.
" 872	"	Ex Parte Casson, 2 C. C. C. 483; 34 N. B. R. 331.
		Reg. v. Horton, 1 C. C. C. 84; 31 N. S. R. 217.
		R. v. Doherty, 3 C. C. C. 505; 32 N. S. R. 235.
		Ex Parte Gorman, 4 C. C. C. 305; 34 N. B. R. 397.
		Reg. v. Murdock, 4 C. C. C. 82; 27 A. R. 443.
		R. v. Hawes, 6 C. C. C. 238.
		Rex v. Law Bow, 7 C. C. C. 468.
		Rex v. McIver, 7 C. C. C. 183.
		R. v. Blank, 10 C. C. C. 360.
" 875	"	Rex v. Rawding, 7 C. C. C. 436.
" 879	"	Lecours v. Hurtubise, 2 C. C. C. 521; Q. R. 8, Q. B. 439.
		R. v. Monoghan, 2 C. C. C. 488; 5 Ter. L. R. 495.
		R. v. McIntosh, 4 C. C. C. 114; 28 O. R. 603.
		R. Simpson, Co., 2 C. C. C. 275; 28 O. R. 231.
		Reg. v. O'Dea, 3 C. C. C. 402; 9 Q. Q. B. 158.
		Superior v. City of Montreal, 3 C. C. C. 379; Q. R. 9, Q. B. 138.

Sec. 879 discussed in Arcand v. Montreal Harbour Commissioners, 4 C. C. C. 491; Q. R. 17, S. C. 497.
Reg. v. Malloy, 4 C. C. C. 116.
R. v. Neuberger, 6 C. C. C. 142; 9 B. C. R. 272.
Rex v. Brook, 7 C. C. C. 216; 5 Ter. L. R. 369.
" 880 " Fenson v. New Westminster, 2 C. C. C. 52; 5 B. C. R. 624.
R. v. McIntosh, 2 C. C. C. 114; 28 O. R. 603.
R. v. Simpson Co., 2 C. C. C. 275; 28 O. R. 231.
Reg. v. O'Dea, 3 C. C. C. 402; 9 Q. Q. B. 158.
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Simington v. Colborne, 4 C. C. C. 367 4 Ter. L. R. 235.
Cavanagh v. McIlmoyle, 6 C. C. C. 88; 5 Ter. L. R. 235.
R. v. Neuberger, 6 C. C. C. 142; 9 B. C. R. 272.
Rex v. Davitt, 7 C. C. C. 514.
R. v. Tucker, 10 C. C. C. 217.
R. v. Doliver Mining Co., 10 C. C. C. 405.
" 881 " Reg. v. Malloy, 4 C. C. C. 116.
R. v. R. Simpson Co., 2 C. C. C. 275; 28 O. R. 231.
R. v. Neuberger, 6 C. C. C. 142; 9 B. C. R. 272.
" 882 " Rex. v. Brook, 7 C. C. C. 216; 5 Ter. L. R. 369.
" 883 " Reg. v. Hawbolt, 4 C. C. C. 229; 33 N. S R. 165.
Reg. v. Murdock, 4 C. C. C. 82; 27 A. R. 443.
R. v. Lewis, 6 C. C. C. 499; 5 O. L. R. 509.
" 884 " Bothwell v. Burnside, 4 C. C. C. 450; 31 O. R. 695.
" 885 " Simington v. Colborne, 4 C. C. C. 367; 4 Ter. L. R. 372.
" 886 " R. v. McDonald, 6 C. C. C. 1.
Re Ruggles, 7 C. C. C. 106; 35 N. S. R. 57.
" 887 " Re Ruggles, 7 C. C. C. 106; 35 N. S. R. 57.
" 888 " R. v. Monoghan, 2 C. C. C. 488; 5 Ter. L. R. 495.
R. v. Neuberger, 6 C. C. C. 142; 9 B. C. R. 272.
R. v. R. Simpson Co., 2 C. C. C. 275; 28 O. R. 231.
R. v. Rondeau, 9 C. C. C. 523; 5 Ter. L. R. 478.
" 889 " R. v. Lewis, 6 C. C. C. 499; 5 O. L. R. 509.
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R. v. McGregor, 2 C. C. C. 410; 26 O. R. 115.
Reg. v. Murdock, 4 C. C. C. 82; 27 A. R. 443.
Reg. v. Randolph, 4 C. C. C. 165; 32 O. R. 212.
Reg. v. Whiffen, 4 C. C. C. 141.
R. v. Hayes, 6 C. C. C. 357; 5 O. L. R. 198.
Rex v. Law Bow, 7 C. C. C. 468.
R. v. Hostyn, 9 C. C. C. 138; 1 W. L. R. 113.
R. v. Meikleham, 10 C. C. C. 382.
" 890 " Ex Parte Kent, 7 C. C. C. 447.
R. v. Hostyn, 9 C. C. C. 138; 1 W. L. R. 113.
" 892 " R. v. Ashcroft, 2 C. C. C. 387; 4 Ter. L. R. 119.
R. v. Robinet, 2 C. C. C. 382; 16 P. R. 49.
" 896 " Reg. v. Spooner, 4 C. C. C. 209; 32 O. R. 451.
" 897 " R. v. Graham, 1 C. C. C. 405; 29 O. R. 193.
Bothwell v. Burnside, 4 C. C. C. 450; 31 O. R. 695.
" 898 " Bothwell v. Burnside, 4 C. C. C. 450; 31 O. R. 695.
" 899 " Simington, v. Colborne 4 C. C. C. 367; 4 Ter. L. R. 372.
" 900 " Reg. v. O'Dea, 3 C. C. C. 402; 9 Q. Q. B. 158.
R. v. Monoghan, 2 C. C. C. 488; 5 Ter. L. R. 495.
R. v. Holland, 4 C. C. C. 72; 7 B. C. R. 281.
Reg. v. Hawes, 4 C. C. C. 529; 33 N. S. R. 389.
R. v. Nugent, 9 C. C. C. 1.

Sec. 900	discussed in	Simpson v. Lock, 7 C. C. C. 294.
		Rex v. Geiser, 8 B. C. R. 169.
" 902 (6)	"	McGillivray v. Muir, 7 C. C. C. 360; 6 O. L. R. 154.
" 905	"	McGillivray v. Muir, 7 C. C. C. 360; 6 O. L. R. 154.
" 907	"	R. v. McDonald, 6 C. C. C. 1.
" 910	"	Reg. v. J. Gibson, 3 C. C. C. 451; 29 N. S. R. 4.
" 922	"	Re McArthur's Bail, 3 C. C. C. 195; 2 Ter. L. R. 413.
" 930	"	R. v. Elliott, 9 C. C. C. 505; 9 O. L. R. 648.
" 932	"	Ex Parte Kent, 7 C. C. C. 447.
		R. v. Robidoux, 2 C. C. C. 19.
" 933	"	R. v. Quinn, 10 C. C. C. 412.
" 934	"	Union Colliery Co. v. Reg., 4 C. C. C. 400; 31 S. C. R. 81.
		Union Colliery Co. v. R., 3 C. C. C. 523; 7 B. C. R. 247.
" 955	"	Reg. v. Horton, 3 C. C. C. 84; 31 N. S. R. 217
		Reg. v. Johnson, 4 C. C. C. 178.
		Rex v. White, 4 C. C. C. 430; 34 N. S. R. 436
" 955 (6)	"	Reg. v. Burtress, 3 C. C. C. 536; 20 Occ. N. 368.
" 956	"	Re Goodspeed, 7 C. C. C. 240; 36 N. B. R. 91.
" 958	"	R. v. Smith, 6 C. C. C. 416.
" 959	"	Re John Doe, 3 C. C. C. 370.
		R. v. Power, 6 C. C. C. 378.
		Re Smith's Bail, 6 C. C. C. 416.
		R. v. McDonald, 2 C. C. C. 64.
" 971	"	R. v. Bonnevie, 10 C. C. C. 377.
		Rex v. Young, 4 C. C. C. 580; 2 O. L. R. 228.
" 973	"	R. v. Siteman, 6 C. C. C. 224.
" 982	"	Woodstock Elec. Light Co., 4 C.C.C. 107; 34 N. B. R. 460.
		Reg. v. Skelton, 4 C. C. C. 467; 18 C. L. T. 205.
		R. v. Bryson, 10 C. C. C. 398.

CRIMINAL INTENT.

See Mens Rea.

CRIMINAL LIBEL.

See Libel.

CROWN.

1. **Breach of Contract by Servant** — Sureties — Discharge.]—The defendants were sued as sureties for the performance of a contract to deliver hay to the N. W. M. Police. The defendants claimed they were relieved from liability because the police authorities failed to carry out their part of the contract in material particulars, viz., (1) By using a quantity of the hay before it had been inspected by a Board of Officers as provided by the contract; (2) By allowing a portion to be carried off by some of the constables, and another portion to be destroyed by cattle before the hay was weighed or measured, as provided by the contract; (3) By measuring instead of weighing the hay, as provided by the contract; the result by weighing being much in favour of the defendant's principal:—Held, that the third objection afforded a good defence. Held, also, that the Crown was responsible for breaches of contract resulting from the acts or omissions of its servants, though not for their torts. Queen v. McFarlane, and the Windsor & Annapolis R. Co. v The Queen, considered. The Queen v. Mowat et al, 1 Terr. 146.

2. **Challenging Jury** — "Stand Aside" — Joint Indictments.]—The Crown has the right to direct any number of Jurors to stand aside until the panel has been called over. The order to a juror to "stand aside" is virtually to challenge him for cause, postponing the consideration of the challenge till

it has been seen whether a full jury can be formed without such. Both the Crown and accused are entitled to any number of challenges for cause. When however, the panel has been called over without a jury being formed, the jurors who have been directed to stand aside are called again, and as each appears he may be either peremptorily challenged by the accused or the Crown may show cause against him; if no sufficient cause be shewn he is sworn. On joint indictments the Crown is entitled to no more peremptory challenge than in the case of the trial of a single person. R. v. LALONDE, 2 C. C. C. 190.

CROWN CASE RESERVED.

1. **Affirmation by Full Court** — JUDGES ABSENT AT HEARING OR JUDGMENT — UNANIMOUS DECISION — APPEAL TO SUPREME COURT.]—A criminal case reserved on points of law was argued before the chief justice and a Judge of the Court of Queen's Bench, (Ont.) and on 4th February, 1878, the same judges affirmed the conviction. The full court should be constituted of the Chief Justice and two puisne Judges. On appeal to the Supreme Court, under 38 Vict. c. 11, s. 49 :—Held, that, although the conviction had been affirmed by but two judges, the decision was unanimous and, therefore, not appealable. AMES v. THE QUEEN, 2 S. C. R. 592.

2. **Challenge to the Array.**]—To an indictment for murder, the prisoner pleaded, challenging the array of the jury panel, which plea was demurred to and judgment given in favour of the Crown by the Judge holding the court of oyer and terminer, who, at the request of the prisoner, reserved a case for the consideration of the Common Pleas division : —Held, not a matter which could be reserved under C. S. U. C. c. 112, and the case was therefore directed to be quashed. REGINA v. O'ROURKE, 32 C. P. 388.

See S. C., 1 O. R. 464 : MORIN v. THE QUEEN, 18 S. C. R. 407.

Semble, that a writ of error was the proper remedy, and that, notwithstanding the Judicature Act, it would lie in the first instance to either the Queen's Bench or Common Pleas division, and not to the Court of Appeal. IB.

3. **Crown's Application** — NEW TRIAL — MISDIRECTION — CODE SEC. 179, 743, 744.]—The accused was indicted for that he did " unlawfully offer to sell, advertise and have for sale, a certain drug represented as a means of preventing conception, or causing a miscarriage, etc.," The Judge directed an acquittal on the ground that the advertisement was not one advertising a medicine to cause an abortion. Crown obtained a reserved case on the question whether the evidence would support a conviction, and should have been left to the jury. Held, per Osler, J. A., that the case should have been left to the jury to construe the meaning of the advertisement, but the Court of Appeal is not obliged, nor would it be right, if possessed of the power, to direct a new trial, after trial and acquittal, though the latter may have been in consequence of an erroneous direction. (2) The cases are extremely rare in which the court would think it right to place the accused a second time in jeopardy for the same offence, contrary to what has been a fundamental principle of English law. (3) In a case of this kind the result of authority is that it is for the Judge to determine whether the document is capable of bearing the meaning assigned, and for the jury to say if under the circumstances it has that meaning or not. REX v. KARN, 6 C. C. C. 479, 5 O. L. R. 704.

4. **Defamatory Libel** — RIGHT TO HAVE JURORS STAND ASIDE — RESERVING CASE AFTER RULING.] REGINA v. PATTERSON, 36 U. C. R. 127.

5. **Deductions from Evidence.**]—A Judge of the County Court having convicted a prisoner of larceny, reserved questions as follows, for consideration of the court :—(a) Whether or not there was any legal evidence to support the conviction ? (b) Whether he was justified in drawing from the facts stated, a presumption sufficiently strong to justify him in finding a judgment of guilty ? Held, (viewing the facts, Weatherbe, J., contra), that the first question might be answered in the affirmative. But as to sufficiency or the deductions to be drawn from the evidence, there was no question properly before the court, such being for the trial

Judge taking the place of a jury. New trial ordered under Code 746. Semble, the Judge having thrown doubt on the propriety of his deductions, there was a mis-trial. REGINA v. McCAFFREY, 33 N. S. R. 232.

6. **Forum** — EVIDENCE.]—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. REGINA v. GIBSON, 16 O. R. 704.

7. **Forum** — WHAT MAY BE RESERVED.]—Under C. S. U. C. c. 112, any question of law which may have arisen on a criminal trial, may be reserved for the consideration of the justices of either of Her Majesty's Superior Courts of common law. REGINA v. BISSELL, 1 O. R. 407.

8. **Hudson's Bay Co's. Lands** — OLD TRAIL — SURVEY AND TRANSFER TO TERRITORIES — OBSTRUCTION — COMPENSATION — PETITION OF RIGHT.]—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 the lands reserved to the Hudson's Bay Co., 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, 1 Terr. L. R. 415.

9. **Indian Marriage** — EVIDENCE OF — WIFE'S EVIDENCE — APPLICABILITY OF ENGLISH LAW.]—The North-West Territories Act, R. S. C. c. 50, s. 11, provides that, with some limitations, the laws of England, as the same existed on the 15th July, 1870, should be in force in the Territories in so far as the same are applicable to the Territories :—Held, that the laws of England relating to the forms and ceremonies of marriage are not applicable to the Territories—certainly quoad the Indian population and probably in any case. On the trial of a prisoner, an Indian, on a criminal charge, the evidence of two Indian women M. and K. was tendered for the defence. M. stated "that she was the wife of the prisoner; that he had two wives, and that K. was his other wife; that she M., was his first wife; that she and the prisoner got married Indian fashion; that he promised to keep her all her life and she promised to stay with him, and that was the way the Indians got married; that he married the other woman last winter; that he and the other woman lived with each other and that he took her for a wife, that was all about it. The trial Judge, rejected the evidence of M. and admitted that of K. Held, affirming the decision of the Judge, that the evidence quoted was sufficient evidence of a legally binding marriage between M. and the prisoner for the purpose of excluding the evidence of M. as being neither a competent nor a compellable witness against the prisoner on a criminal charge. THE QUEEN v. NAN-E-QUIS-A-KA, 1 Terr. L. R. 211.

10. **Indictment for Larceny** — CONVICTION FOR MISDEMEANOUR.]—The prisoner having picked up certain goods that had floated away from the wreck of a steamer, appropriated them to his own use. He was indicted for larceny, the property in the goods being laid in the captain of the steamer, but at the trial the Judge instructed the jury that they could not convict him of larceny. The prosecution then claimed a conviction for a misdemeanour and the jury found accordingly. On a case being reserved for the full court :—Held, Wilkins, J., dissenting, that, under sec. 110 of the Larceny Act, 32 and 33 Vict., chap. 21, sec. 3, the conviction must be sustained, and that although the offence was probably committed at sea the court had full jurisdiction in the premises. QUEEN v. MARTIN, 3 N. S. D., 124.

11. **Insanity** — No Evidence of — Crown's Right to Reserve Case on Acquittal.]—It is competent for the Crown to obtain a reserved case on a question of law, to wit, whether there was any evidence of insanity set up by defence on a charge of theft, notwithstanding the acquittal of accused by the jury. Rex. v. Phinney, 6 C. C. C. 469, 36 N. S. R. 264.

12. **Judge's Comments** — Irregularity of Juror's Proceedings — Bias of Juror.]—1. A remark by the trial Judge to counsel for the accused, while the jury is being empanelled, "That if you continue to challenge every man who reads the papers, we will have the most ignorant jurors selected to try this cause," is not a matter of law, but an irregularity which might entail the annulling of the verdict. In order to do such, it must be of such a nature as to unduly prejudice the jury. 2. The trial Judge has a right to give his opinion of the evidence to the jury; and a remark of the Judge to the effect that it was very strange it should take forty or fifty witnesses to establish the character of the accused, is not a matter of law, but an irregularity, which might be a ground to impeach the verdict. 3. The fact that a juror has made remarks tending to disclose a bias for or against the accused will not of itself furnish a ground for a new trial. It must be shown that the juror was so prejudiced as to be unable to give the accused a fair and impartial trial. Rex v. Carlin, 6 C. C. C. 365, Q. R. 12, K. B. 483.

13. **Jury** — Disagreeing — Evidence of Juror Inadmissible to Show Disagreement — Code Sec. 735-743.]—The statement of two jurors even under oath is inadmissible on an application for a reserved case, to show that the verdict of the jury was not unanimous, but that two of them dissented from the rest, yet failed to object on the announcement of the verdict, having been informed and believing that ten was a sufficient number to bring in a valid verdict. Rex v. Mullen, 6 C. C. C. 363, 3 O. L. R. 373.

14. **Larceny** — No Evidence on Points Reserved.]—When the facts stated in the reserved case or submitted in evidence the trial do not relate to the question of law reserved for the opinion of the Appellate Court, the case sent up will be quashed. When a reasonable account is given by an accused person in possession of stolen property, at the time when he is found in possession of the goods, it rebuts the presumption of guilt arising from the fact of possession. This principle does not comprehend an account given by the accused subsequently at his trial. Regina v. McKay, 6 C. C. C. 151, 34 N. S. R. 540.

15. **Limitations in Reference to.**]—Under sec. 742 and the sections immediately following, a reserved case can be stated only by a court or a Judge having jurisdiction in criminal cases and by a magistrate in proceedings under sec. 785. The Queen v. Hawes, 4 C. C. C. 529, 33 N. S. R. 389.

16. **Obtaining Money under False Pretences** — Preferment of Indictment — Delegation of Authority by Attorney-General — 32 & 33 Vict. c. 29, s. 28 —Quashing Indictment.]—Under 32 & 33 Vict. c. 29, s. 28, the Attorney-General cannot delegate to the judgment and discretion of another the power which he is authorized personally to exercise in directing that an indictment for obtaining money by false pretences should be laid before the grand jury; and it being admitted that the Attorney-General gave no directions with reference to the indictment, in the case reserved, a motion to quash should have been granted. The judgment appealed from (1 Dor, Q. B. 126) was reserved and the conviction set aside. Abrahams v. The Queen, 6 S. C. R. 10.

17. **Perjury** — Proof of Previous Trial — New Trial — Code Sec. 691-746.]—Defendant was tried for perjury alleged to have been committed by him, when called and sworn as a witness on a trial of one Kennedy for murder. The only evidence adduced was that of the clerk of the court who produced his book, and identified the defendant as a witness who had been sworn and testified in the Kennedy trial. The stenographer was called and related the accused's former evidence. Neither the indictment or any copy of it was produced :—Held, that the proper legal proof of such a matter of record is the production of the record of the former trial, that is to say, the sworn or exemplified copy of the in-

dictment and verdict and judgment thereon, or by some authoritative document which the law has declared to be a sufficient substitute therefor. R. v. DRUMMOND, 10 C. C. C. 341, 10 O. R. 546.

18. **Perjury** — EVIDENCE — JUDGE'S NOTES.]—Held, that on the trial of a charge of perjury, the production of a book purporting to contain full notes of the evidence taken by the trial Judge (who was proved to have actually taken notes) in the case in which the perjury was alleged to have been committed, and proved to be in the Judge's handwriting, and to be signed by him, afforded, in view of the N. W. T. Act, s. 69, proper and sufficient evidence of the statement in respect of which the perjury was assigned. THE QUEEN v. MILLS ALIAS MILLET, 1 Terr. L. R. 297.

19. **Point Not Raised at Trial.**]—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 a case reserved, for the full court. QUEEN v. CUNNINGHAM, 6 R. & G., N. S. R 31, 6 C. L. T. 139.

20. **Police Magistrate.**]—Held, that a police magistrate cannot reserve a case for the opinion of a superior court under C. S. U. C. c. 112, as he is not within the terms of that Act. REGINA v. RICHARDSON, 8 O. R. 651.

21. **Murder** — RIGHT TO HAVE JURORS STAND ASIDE.]—MORVIN v. THE QUEEN, 18 S. C. R. 407.

22. **Right to Special Jury.**]—REGINA v. KERR, 26 C. P. 214.

23. **Rule Applicable to** — FALSE PRETENCE BY CONDUCT.]—The rule with respect to reserving questions of law, is, that a question should be reserved if the trial Judge has some doubt in the matter; but that he should refuse to reserve a question when he has no doubt whatever on the subject. The question whether the conduct of an accused person charged with obtaining money under false pretences, does in fact constitute such crime, is not a question of law, but an issue of fact within the province of the jury to decide, and it not therefore the subject of a reserved case. REGINA v. LETANG, 2 C. C. C. 505.

24. **Stipendiary Magistrate** — POWER TO RESERVE.]—Stipendiary magistrate of the city of Halifax has no power to reserve a case tried summarily before except under s. 900 of the Code. REGINA v. HAWES, 33 N. S. R. 389.

25. **Sufficiency of Evidence.**]—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 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. LLOYD, 19 O. R. 352.

26. **Sufficiency of Indictment.**] — The sufficiency of an indictment upon motion to quash is not a question of law which arises on the trial, and therefore cannot be reserved under T. S. C. c. 174, s. 259, and the court has no power to entertain it. REGINA v. GIBSON, 16 O. R. 704.

27. **Summary Trial** — JURISDICTION OF MAGISTRATE — TIME WITHIN WHICH RESERVED CASE MAY BE SUBMITTED.]—The prisoner was charged with unlawfully issuing twenty-one money orders with fraudulent intent of appropriating the monies. He was brought before the sheriff of the county of Joliette, and consented to be tried by him. He pleaded guilty and was sentenced to three years in the penitentiary. At the time of his trial and sentence, there was a magistrate appointed for the district of Joliette. The appointment seemed not to have been noticed at Joliette, and both sheriff and prisoner were ignorant of it. Prisoner on being made aware of it, was advised that the sheriff was without jurisdiction, and asked him to reserve the question of his jurisdiction which was done:—Held, that under section 743 of the Criminal Code a question of law can be reserved for the opinion of the Court of Appeal after a trial, and as the law imposes no limitation

of time within which it must be done, a reserved case may be granted at any time, however remote, from the date of trial or judgment, and even when the condemned person is imprisoned under sentence, if it is still possible that some beneficial result may be obtained by a decision in favor of the prisoner. 2. Whether a Judge in any matter has jurisdiction to act, depends on the construction of the law under which he claims to act, and is essentially a question of law, and therefore susceptible of being reserved. REGINA v. PAQUIN, 2 C. C. C. 135.

28. **Time of Application** — MOTION TO COURT OF APPEAL.]—The court itself may at any time reserve a case for the Court of Appeal, but in case of refusal the party applying to the Court of Appeal on motion for such case must show that he has applied during the trial as required by paragraph (3) of sec. 743, Criminal Code. REX v. TOTO, 8 C. C. C. 410.

29. **Time for** — WHEN AFFIDAVITS MAY BE LOOKED AT.]—A reserved case may be had after sentence has been passed. As a general principle only the case reserved must be taken as correct, but where a Judge is ordered to return his charge and does not do so but returns instead what he believes to be the effect of it,and does not deny what is stated in the affidavits produced and served on him, the court for Crown cases reserved may look at the affidavit. R. v. MCGUIRE, 9 C. C. C. 554.

30. **Trial, Verdict or Conviction Essential to.**]—A reserved case cannot be had where there has been neither trial nor verdict of guilty, nor conviction, and where a case was reserved for the Court of Appeal upon a question of law raised on behalf of accused upon arraignment, but before he had pleaded to the charge the reserved case was remitted to the end, that such further proceedings be had on the charge against the accused as to law and justice appertain. REX v. TREPANIER, 4 C. C. C. 259, Q.R. 10, K. B. 222.

31. **Wrong Person Summoned and Sworn as Juror.**]—BRISEBOIS v. REGINA, 15 S. C. R. 421.

CUSTOMS.

Customs Act — CONSTRUCTION OF — PUNISHMENT APPLICABLE WHETHER GOODS FOUND OR NOT FOUND IN POSSESSION OF OFFENDER.]—The punishment imposed by sec. 197 of the Customs Act, which was repealed and replaced by a section in the amending Act of 1888, applies to the case where goods unlawfully imported into Canada upon which the duties lawfully payable have not been paid, are found in the possession and keeping of the offender, as well as to the case where there are not so found. O'GRADY v. WISEMAN, 3 C. C. C. 332, Q. R. 9, Q. B. 169.

See also INLAND REVENUE.

DEAD BODY.

Neglect to Bury — CODE SEC. 206.]—Every dead human body must be buried, and the neglect to decently bury a dead body when the office is once undertaken by any person, even though such person is not the party on whom the duty prima facie rests, is an indictable offence under sec. 206 of the Criminal Code. R. v. NEWCOMB, 2 C. C. C. 255.

DAMAGES.

See JUSTICE OF THE PEACE — SEARCH WARRANT.

DEFAMATORY LIBEL.

1. **Affidavit in Reply.**]—When the libel charges the person libelled with having by a previous writing, provoked it, the latter by his affidavit, on which he moves for a criminal information is bound to answer it, otherwise the affidavit is insufficient and the rule will be discharged. R. v. WHELAN, 1 P. E. I. R. 220.

2. **Averment of Injury to Reputation** — DEFECT IN — QUASHING.]—It is an essential ingredient of the offence of publishing a defamatory libel that such is likely to injure the reputation of the person libelled, by exposing him to hatred, contempt, or ridicule, or that it is designed to insult him. The omission to state such averment in an indictment is fatal,

as being a defect in the matter of substance, and as such is not amendable. R. v. CAMERON, 2 C. C. C. 173.

3. **Change of Venue** — POLITICAL INFLUENCE.]—Change of venue in the trial of an indictment for defamatory libel will not be granted upon the allegation of the defendant that a fair trial in the present venue is impossible by reason of the political influence of the prosecutors. To obtain a change of venue, there must be some allegation satisfying the court that a fair trial cannot be had. REGINA v. NICOL, 4 C. C. C. 1, 7 B. C. R. 278.

4. **Justification** — DOCUMENTS.] —The special plea of justification should contain only the statement in a summary form of the material facts relied on, and not evidence by which it is proposed to prove such facts, nor comments, or argument. The existence, date, and effect of the document relied on, may be stated, but the document itself may not be embodied in the plea. REGINA v. WM. A. GRENIER, 1 C. C. C. 55.

5. **Commission** — PLEA OF JUSTIFICATION — TIME OF APPLICATION.]—On an indictment of defamatory libel the accused pleaded justification and moved for order for commission to take evidence in England. It was held it was not too late to move at the trial, as the accused was entitled to all of the time up to his arraignment to consider whether he would plead justification. REGINA v. NICOL, 5 C. C. C. 31, 22 Occ. N. 75, 8 B. C. R. 276.

6. **Criminal Information.**]— A party seeking a criminal information against another must himself be free from blame. R. v. WHELAN, 1 P. E. I. R. 223.

7. **Estreat of Bail** — MOTION FOR JUDGMENT.]—Where a defendant was convicted by a jury of defamatory libel, and the verdict was recorded, and the offender was, by order of the Court, released on bail to appear for judgment, it is only upon motion of the Crown in the Province of Ontario, that the recognizance of the defendant and his bail is estreated, or that judgment is moved against the offender. REX v. YOUNG, 4 C. C. C. 580, 2 O. R. 228.

8. **Justification** — PARTICULARS — MOTION TO QUASH PLEA — R. S. C. ch. 174, SEC. 2, SUB-SEC. (e), SEC. 143.]—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 punished 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 Vic. 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 its 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. (e). REGINA v. CREIGHTON, 19 O. R. 339—MACMAHON.

9. **Plea of Justification** — PUBLIC INTEREST.]—A plea of justification will not be dismissed upon the allegation that the alleged defamatory publication was not in the public interest, where the publication in question was an answer to certain articles which the complainant had caused to be published for the purpose of exalting his generosity towards his employees. REGINA v. BR[illegible]AN, 3 C. C. C. 89.

10. **Remedy of Private Prosecutor on Breach of Condition of Suspended Sentence.**]—After a lapse of fourteen years from a conviction for defamatory libel, a private prosecutor will not be heard upon a motion to estreat the recognizance and bail of the defendant, but will be left to his remedy by action or indictment against the defendant in regard to such alleged libellous charge. REX v. YOUNG, 4 C. C. C. 580, 2 O. L. R. 228.

DEPORTATION.

See IMMIGRATION.

DEPOSITIONS.

1. **Contradiction of Witness' Testimony by Examination at Preliminary Hearing**

Where Deposition Lost.]—Where the written deposition is not available one evidence of what the witness said may be given. R. v. TROOP, 2 C. C. C. 29, 30, N. S. R. 339.

2. **Coroner's Inquest** — DEPOSITION NOT SIGNED BY WITNESS — ADMISSIBILITY OF.]—A deposition being merely notes of evidence taken by the coroner and not containing the witness' own expressions and not being signed by witness, nor appearing to have been read over to him, is not admissible in contradiction of the witness' testimony on a subsequent proceeding. REGINA v. CIARLO 1, C. C. C. 157.

3. **Illegal if not Taken in Presence of Magistrate.**]—A deposition taken at a preliminary enquiry in the absence of the magistrate has no legal value whatever, it is not admissible in evidence, and being illegal, it cannot be used as the foundation for any ulterior action. REX v. TRAYNOR, 4 C. C. C. 410, Q. R. 10, Q. B. 63.

4. **Of Deceased Witness Taken at Preliminary Hearing.**]—The mere fact that a deposition of a deceased witness taken at a preliminary hearing, was annexed to other depositions relating to the same charge, does not render the deposition admissible in evidence, where it has no special caption, and does not "purport to be signed by the Justices, by, or before whom the same purports to have been taken," Criminal Code secs. 590-687, discussed. R. v. HAMILTON, 2 C. C. C. 390, 12 Man. L. R. 354, 507.

5. **Reading Over and Signing of.**]—Criminal Code, 1892, s. 590, s.-s. 4, requiring the reading over and signing of depositions is matter of procedure, and does not affect the justice's jurisdiction. EX PARTE DOHERTY, 32 N. B. R. 479.

6. **Use of Before Grand Jury.**]—Preliminary depositions can be read before the grand jury only in cases where they are admissible as evidence before a petit jury. R. v. BELANGER, 6 C. C. C. 295, 12 Que. K. B. 69.

See also CONVICTION — EVIDENCE — INDICTMENT.

DEPUTY RETURNING OFFICER.

See PERSONATION.

DESERTION.

1. **Assisting Sailors or Soldiers to Desert** — INDICTMENT.]—The Naval Dicipline Act, 29 & 30 Vict. c. 109, s. 25, authorizes a summary conviction before magistrates for this offence, but the 101st section expressly preserves the power of any court of civil or criminal jurisdiction with respect to any offence mentioned in the Act, punishable by common or statute law:—Held, therefore, that defendant could be indicted under C. S. U. C. c. 100, s. 2. REGINA v. PATTERSON, 27 U. C. R. 142.

2. **Assisting Sailors or Soldiers to Desert** — MUTINY ACT.]—The Imperial Mutiny Act does not override C. S. C., c. 100, but the latter was passed in aid of it, and is therefore in force. REGINA v. SHERMAN, 17 C. P. 166.

Held, that the punishment by fine and imprisonment imposed by the Provincial Act, stands abolished as long as the Mutiny Act is in force, and that the imprisonment can in no case exceed six calendar months; but that the power of trial by the court of oyer and terminer, under the Provincial Act, has not been taken away by the Mutiny Act, and therefore that the defendant in this case could not complain, as he had been tried by a tribunal of this kind, and sentenced to no longer imprisonment than the last mentioned period; and though a fine of 10s. had also been imposed, this was merely nominal, in compliance with the Provincial statute, and would not entitle him to be discharged, as the court had power to pass the proper judgment if an improper one had been given. IB.

3. **Persuading Soldiers to Desert.**]—Held, that a warrant of commitment in which it was charged that the prisoner, on the 20th June, 1864, "and on divers other days and times," at the city of Kingston, did unlawfully attempt to persuade one H., a soldier in Her Majesty's service, to desert, was bad, for it was impossible to say upon reading the warrant how many offences he had committed or how the punishment was awarded. IN RE MCGINNES, 1 C. L. J. 15.

DISORDERLY HOUSE.

1. **Common Gaming House** — CRIMINAL CODE SECS. 783-784.]—The words "disorderly house" is secs. 783 and 784 of the Code do not include or refer to a common gaming house, and a magistrate, a Judge of the Sessions of the Peace, has no summary jurisdiction to try the accused on such a charge even with his consent. REGINA v. FRANCE, 1, C. C. C. 321.

2. **Form of Conviction** — PROSECUTION UNDER VAGRANCY CLAUSES — CRIMINAL CODE OR SUMMARY TRIALS PROCEEDINGS.]—The recital in a conviction for being an inmate of a disorderly house, not alleging the defendant to have been "charged before me" as authorized by sec. 807, Criminal Code, but stating that "she is convicted, etc.," it was held by Townsend, J., that the magistrate must have proceeded under Criminal Code 207 and 208. REX v. LAURA CARTER, 5 C. C. C. 401.

3. **House of Ill Fame** — FORM OF COMMITMENT — CERTAINTY — FORUM.]—The prisoner was convicted by the police magistrate for the city of Toronto, for that she "did on," &c., "at the said city of Toronto, keep a disorderly bawdy house on Queen street, in the said city," &c., 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, 1. No objection that the commitment stated the offence to have been committed on the 10th of August, instead of the 11th, as in the conviction, the variance not being material to the merits; 2. Nor that the commitment charged that the prisoner "was the keeper of," &c., and the conviction "that she did keep," both differing from the statute, which designates the offence as "keeping any disorderly house," &c., for all these expressions convey the same idea; 3. Nor that the commitment did not shew that the offence was committed within the police limits of the city, the words used in the Act C. S. U. C. c. 105, s. 14, for there was no ground for supposing any differnece between these and the ordinary city limits; 4. Nor that there was nothing in the commitment to shew whether the prisoner pleaded to the charge or confessed it; 5. It was held no objection that the conviction was not sustained by the information, the latter being that the defendant was the keeper of a disorderly house, and the former for keeping a common disorderly bawdy house; for the commitment would not be void because of a variance between the original information and the conviction made after hearing evidence; 6. Nor that no notice had been put up as required by s. 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; 7. Nor 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 never enter into the question whether the magistrate has drawn the right conclusion from it; 8. Nor that the offence stated in the commitment, of keeping a common disorderly bawdy house, 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. Semble, that on an application like this, affidavits cannot be received to sustain objections to the conduct of a magistrate in dealing with the case before him; but that such conduct may furnish ground for 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. R. 44.

4. **House of Ill Fame** — INMATE OF HOUSE OF ILL FAME — APPEAL TO SESSIONS.]—Where a woman has been prosecuted before the police magistrate of a city under s. 783 of the Code for being an inmate of a house of ill fame and convicted under s. 788 of the Code, there is no appeal to the general sessions. REGINA v. NIXON, 19 C. L. T. Occ. N. 344.

5. **House of Ill Fame** — EVIDENCE.]—Nature of evidence to prove a charge of being an inmate of a house of ill fame, considered. REGINA v. ST. CLAIR, 27 A. R. 308.

6. **House of Ill Fame** — TIME — 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 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, 37 U. C. R. 540.

7. **House of Ill Fame.** — Upon a motion on the return of a habeas corpus to discharge the prisoner who was convicted of keeping a house of ill-fame :—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. REGINA v. CYR, 12 P. R. 24.

9. **House of Ill Fame** — PROSTITUTE.]—A conviction under 32 & 33 Vict. c. 28 (D), for that V. L. was, in the night time of the 24th of 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. REGINA v. LEVECQUE, 30 U. C. R. 509.

9. **House of Ill Fame** — PROCEDURE — PLEADING GUILTY.]—The offence of being a keeper of a house of ill-fame is an indictable offence, and it may be tried either before a jury in the ordinary way or before a police magistrate under the summary trial clauses or before a justice of the peace under the summary convictions clause of the Code. A prisoner was convicted by a police magistrate, after pleading guilty to the charge that she did "unlawfully appear the keeper of a house of ill-fame," and was sentenced to be imprisoned for one year in the Andrew Mercer reformatory :—Held, that the conviction might be treated as having been made under the summary convictions clauses of the Code, although the sentence exceeded the power of the magistrate, and that such convictions might be supported and the sentence amended under those clauses. :—Held, also, that where a prisoner charged before a magistrate with unlawfully appearing the keeper of a house of ill-fame had pleaded guilty to such charge, there was a trial on the merits, and that such person was to be deemed guilty of the offence of keeping a house of ill-fame. REGINA v. SPOONER, 32 O. R. 451.

10. **Inmate of House of Ill Fame** — CONVICTION — CRIMINAL CODE SECS. 783 AND 808 — RIGHT TO APPEAL.]—A prisoner convicted under Criminal Code 783 of being an inmate of a house of ill-fame has no right of appeal, this being precluded by sec. 808. REGINA v. NIXON, 5 C. C. C. 32.

11. **Keeping House of Ill Fame** — CONVICTION — EVIDENCE.]—REX v. MARTIN, 1 O. W. R. 429.

12. **Keeping Bawdy House** — OFFENCE — DUPLICITY — CONTINUITY.] — The defendant was convicted by the stipendiary magistrate for the city of Halifax of the offence of "keeping a disorderly house, that is to say, a common bawdy house, on the 21st April, 1901, and on divers other days and times during the month of April, 1901," and was fined the sum of $54, and in default of payment of the fine, was adjudged to be imprisoned with hard labour for a term of four months: —Held, dismissing application for a habeas corpus, that the offence as charged did not constitute more than one offence; and that the word "keeping" implied a continuous offence. REX v. KEEPING, 34 N. S. Reps. 442.

See also S. C. 21 Occ. N. 508, 34 N. S. Reps. 443n.

13. **Keeping Bawdy House** — CONTINUOUS OFFENCE.]—Defendant was convicted by the stipendiary magistrate of the city of Halifax, of the offence of "keeping a disorderly house, that is to say, a common bawdy house, on the 21st April, 1901, and on divers other days and times during the month of April, 1901," and in default of fine paid was imprisoned with hard labour. To an objection taken on motion for habeas corpus :—Held, that the words used indicated one continuous offence, not several separate

offences. (Note—The court refused to hear objection based on proceedings in the court below, prior to conviction. Subsequently on a renewal of the application, and on production of the record, Weatherbe, J., discharged the defendant. 4 C. C. C. 495, 37 C. L. T. 858—Reporter.) REX v. KEEPING, 34 N. S. R. 442.

14. **Keeping Bawdy House** — OFFENCE — CONVICTION — VAGRANCY — CRIMINAL CODE, s. 207.]—REX v. LECONTE, 6 O. W. R. 970.

15. **Keeping Bawdy House** — CRIMINAL CODE, s. 195 — WHAT CONSTITUTES OFFENCES — PLACE OF RESORT FOR PROSTITUTES.]—Crown case reserved. Magistrate found that a certain house was kept by defendant for the purpose of prostitution, but there was not sufficient evidence to shew that any other women resorted thereto for such purposes. The question reserved was whether, in these circumstances, the magistrate was right in convicting defendant under s. 195 of the Criminal Code, or whether he should have applied the ruling in Rex v. Young, 6 Can. Crim. Cas. 42, and acquitted defendant :—Held, Code has not changed the law as to what constitutes the offence of keeping a common bawdy house, and that a woman living by herself in a house cannot be convicted of the offence unless other women than herself resort to it for the purpose of prostitution. REX v. MANNIX, 6 O. W. R. 265, 10 O. L. R. 303.

16. **Keeping Bawdy House** — NATURE OF OFFENCE — EVIDENCE — CRIMINAL CODE s. 195.] — 1. A woman, living by herself in a house, cannot be convicted of keeping a bawdy house therein, unless it is shewn that one or more other women resort to it for purposes of prostitution. Rex v. Young, 14 Man. L. R. 58, and Singleton v. Ellison, (1895), 1 Q. B. 607, followed. 2. In order to support a conviction for keeping a bawdy house, it is not sufficient to shew the bad reputation of the house and its inmates and that men resorted to it in the night, but actual proof must be given of some act or acts of prostitution, though definite proof of one may be sufficient. Revina v. St. Clair, 3 Can. Crim. Cas. at p. 557, followed. 3. Section 195 of the Criminal Code, 1892, does not change the law, as it was before the Code, as to the essential ingredients of the offence of keeping a bawdy house and is intended merely to define the nature of the premises within which a bawdy house may be kept, and not to state what acts constitute such keeping. REX v. OSBERG, 15 Man. L. R. 147, 1 W. L. R. 121.

17. **Keeping Disorderly or Common Betting House** — RACE TRACK OF INCORPORATED ASSOCIATION — BETTING AT.]—The defendant was tried before a police magistrate upon a charge of keeping a disorderly or common betting house, found guilty, and convicted. A case was stated by the magistrate after leave granted, in which he reported that it was shewn that a house was kept and used for betting between persons resorting thereto and the keeper; that the accused appeared, and he found him to be the keeper; that the house was owned by a joint stock company, of which the accused was president, and was situated on the race track of an incorporated association; that there were about thirty persons betting with accused and his assistants, some on races then in progress in the State of New York, with which there was telegraphic communication, and others on races in progress on the local race track conducted by the company under an agreement with the association :—Held, that the offence was the keeping of a house for the purposes intended in s. 197 of the Code, and that the facts proved brought the accused within its danger, and he was rightly convicted : —Held, also, that s.-s. 2 of s. 204 of the Code stands by itself, and that the exception contained in it expressly limited to the first part of that section, and it should not be read into s. 197. REX v. HANRAHAN, 22 Occ. N. 228, 3 O. L. R. 659, 1 O. W. R. 346.

18. **Keeping Bawdy House** — CRIMINAL CODE.]—A female cannot be convicted of unlawfully keeping a bawdy house, under s. 198 or s. 783 of the Criminal Code, unless it is shewn that the house or room in question is occupied or resorted to by more than one female for the purposes of prostitution. Singleton v. Ellison, (1895) 1 Q. B. 607, followed. REX v. YOUNG, 22 Occ. N. 211, 14 Man. L. R. 58.

19. **Keeper, inmate or Frequenter of** — JURISDICTION OF RECORDER.)—The word 'magistrate' signifies and includes every

recorder in the Province of Quebec, and the jurisdiction of a recorder is absolute where a person is charged with keeping or being an inmate of, or habitually frequenting a disorderly house, house of ill-fame or bawdy-house. REGINA v. BOUGIE, 3 C. C. C. 487.

20. **Lessor Equally Guilty with the Lessee Where House Leased for the Purposes of Prostitution.**)—A person who leases a house to another for the purposes of prostitution renders himself under the provisions of paragraph (b) of section 61 of the Criminal Code, a party to and guilty of the offence afterwards committed by his lessee of keeping a disorderly house, although he was not himself the keeper and he can be prosecuted, tried, convicted and punished in the same manner as the actual keeper. REGINA v. ROY, 3. C. C. C. 472, Q. R. 9, Q. B. 312.

See also BAWDY HOUSE — GAMING — VAGRANCY.

DISTRESS.

1. **Imprisonment in Default of.**]—One of the convicting justices cannot exercise the discretionary power conferred by section 875, which allows the justices, when it appears that the issuing of a distress warrant would be ruinous to the defendant and his family, or by his confession that he has no goods or chattels wherein to levy such distress, instead of issuing the distress warrant, to commit the defendant to gaol. REX v. RAWDING, 7 C. C. C. 436, N. S.

2. **Rescue of Goods Wrongfully Distrained Justifiable Before the Impounding.**] —No rescue can be made of a distress after the goods are impounded, for then they are in the custody of the law, but if there be anything wrongful in the distress, the tenant may rightfully rescue his goods before the impounding. REX v. HARREN, 7 C. C. C. 543, 6 Ont. L. R. 668, 24 Occ. N. 10, 2 O. W. R. 903.

See also CERTIORARI — CONVICTION — INFORMATION — JUSTICE OF THE PEACE.

DIVORCE.

See BIGAMY.

DOCUMENTS.

Selling Counterfeit Tokens of Value, or What Purport to be Counterfeit Tokens of Value — CRIMINAL CODE.]—Documents or paper writings not counterfeits, but so made or executed as to resemble United States Government notes, are counterfeit tokens of value within the meaning of the Criminal Code, 1892, s. 479. REGINA v. COREY, 33 N. B. R. 81.

See also COUNTERFEITING — EVIDENCE.

DOMICILE.

See BIGAMY.

DRUGGIST.

1. **Druggist.**]—A druggist is not entitled to ascertain from intending purchasers the symtoms, and determine disease, and prescribe remedy, but may if told complaint and asked for remedy, inform purchaser of remedies he has, and also which in his opinion is the better or best remedy. Also the fact that only the ordinary price is charged for medicine does not prevent it from being practising for gain the court cannot decide the transaction, and apply the consideration all to medicine. REGINA v. HOWARTH. 24 Ont. R. 561, 1 C. C. C. 15.

2. **Drugs** — CRIMINAL CODE SEC. 179 (c) — ADVERTISEMENT — WORDS TO BE TAKEN IN LITERAL SENSE.]—An indictment for having advertised a medicine represented to cause miscarriage, the advertisement alone was relied upon by the prosecution. This contained a warning that 'ladies were not to use the tablets during pregnancy'. It was urged by counsel that the caution in reality counselled the employment of the medicine to avoid pregnancy, but the court held that the words must be taken in their material and primary sense, and the case should be dealt with as though the allegation had been the subject of a criminal libel. REX v. KARN, 5 C. C. C. 543, 5 O. R. 704.

DYING DECLARATION.

1. **Admissibility** — PREVIOUS TRANSACTIONS — RES GESTAE.]—A dying de-

claration is admissible only as to the transaction itself from which the death ensued, such circumstances as from part of the res gestae should be admitted in evidence, but not any circumstances which occurred before or after, and which are independent of the transaction itself. REX v. LAURIN, (No. 1) 5 C. C. C. 324.

2. **Admissibility of.**]—If the deceased was at the time of making the declaration in such a condition that L. believed (1) that his death was imminent and impending (2) that he was in danger of dying in a short time without hope of recovery, the declaration is admissible; and whether such was the case is a question entirely for the trial Judge to decide. R. v. WOODS, 5 B. C. R. 585, 2 C. C. C. 159.

3. **Admissibility of** — "GOING FAST".]—On a charge of murder a declaration by the deceased that he was "going fast" and that the prisoner had shot him, and asking that a priest be sent for, though subsequently he requested the presence of a doctor, is admissible as a dying declaration, and the fact that he subsequently entertains a hope of recovery is irrelevant except in so far as it may be evidence of his state of mind at the time of the declaration. REGINA v. DAVIDSON, 1 C. C. C. 351, 30 N. S. R. 349.

4. **Dying Declaration.**]—On trial of an indictment of murder, the Crown offered as a dying declaration of the deceased, testimony of a witness as follows:—"He said he was shot." I said, "Do you really say you are shot?" He said, "I am shot in the body. I am going fast." I said, "Can't you take my arm and I will take you away?" He said, "I can never walk again." I said, "For God's sake who shot you?" He said, "Henry Davidson shot me. God help him. I hope he will not be hanged for it.":—Held, that the evidence indicated such a complete expectation of death as rendered it admissible as a dying declaration. And that a subsequent proposal by the deceased to send for a doctor was not necessarily inconsistent with the idea that all hope was gone. REGINA v. DAVIDSON, 30 N. S. R. 349.

5. **Of Indian Obtained by Question and Answer and Translated by Interpreter.**]—A dying declaration made by an Indian ignorant of the English language, the statement having been obtained through an Indian interpreter by question and answer, and the interpreter translating the statement to another person by whom it was taken down in writing in narrative form, was held to have been properly admitted if the evidence was clear that the interpreter properly translated the statement, and the person who wrote it, properly took down the language that was used. REX v. LOUIE, 7 C. C. C. 347, 10 B. C. R. 1.

See also EVIDENCE.

ELECTION.

1. **Committal for Trial on Manslaughter** — ELECTION FOR SPEEDY TRIAL — APPLICATION TO SUBSTITUTE MURDER CHARGE.]—The accused had been proceeded against on the preliminary enquiry for murder, but at the instance of the Crown was committed on a charge of manslaughter, and on this charge had elected for speedy trial. The Crown then desired to change the charge again to murder, but the court held the accused had the right to elect for speedy trial and there was no authority to warrant the alteration again of the charge under the circumstances. REX v. TELFORD, 8 C. C. C 223, 2 W. L. R. 405.

2. **Crim. Code Sec. 767** — TRIAL BEFORE PARTICULAR JUDGE.]—Crim. Code Sec. 767 prior to its amendment by 63 and 64 Vict. ch. 46 required the speedy trial to be before the particular Judge before whom the election was made. REX v. ALFRED MCDOUGALL, 8 C. C. C. 234, 8 O. L. R. 30.

3. **Neglect to Inform Accused of Next Jury Court** — COUNSEL'S CONSENT TO SUMMARY TRIAL.] — Upon the arraignment of the prisoners before a magistrate, of an offence requiring their consent in order to try summarily; after the charge had been read over to them, the magistrate asked accused whether they wished to be tried before him or before a jury without naming the date of the next jury court. The prisoners thereupon through their counsel elected for summary trial. It was held that sec. 785-786 of the Criminal Code had not been complied with,

and the consent of counsel was no waiver, and conviction quashed. Rex v. Walsh & Lamont, 8 C. C. C. 101, 7 O. L. R. 149.

4. **Power of Prosecuting Officer to Receive** — Depositions — Perusal of Magistrate's Signature.]—Where there is no judge of the county court residing in the county, the prosecuting officer or counsel appointed under the provisions of R. S. 1900, c. 165, s. 1, is empowered to take the election of a prisoner, under the Code, s. 766, to be tried before the Judge of the county court. 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 making of his election is one necessary act in these proceedings. Where all the depositions, or copies thereof, taken against the prisoner, and returned into the court before the trial, were handed to the prisoner's counsel for perusal :—Held, that it was no cause of complaint that the papers so handed were mixed up with other papers, there being no serious difficulty in under standing those applicable to the particular offence with which the prisoner was charged :—Held, also, that that depositions to which the magistrate had affixed his signature were not to be rejected because such signature was possibly not placed in the most correct place. Quære, whether an indictment found by the grand jury should be quashed because depositions are improperly taken. The King v. Traynor, 4 Can. Crim. Cas. 410-questioned. Rex v. Jodrey, 25 Occ. N., 109.

5. **Re-election** — New Charge — Seduction.]—Where on a charge of seducing a girl over the age of fourteen years and under sixteen years, the prosecution abtains an amendment of the indictment to conform to the evidence, by changing the date of the commission of the alleged offence, to a date when the girl was of previously chaste character, the amendment constitutes a new charge, and the accused has the right to re-elect. R. v. Lacelle, 10 C. C. C. 231.

6. **Right to Re-Elect** — Mandamus — Crim. Code 766-767.]—A prisoner who has elected to be tried by a jury, and has been remanded to gaol, has no absolute right to insist on again being brought before the court to re-elect for speedy trial and mandamus to the sheriff will not lie. Regina v. Ballard, 1 C. C. C. 96, 28 O. R. 489.

7. **Summary Trial** — Omission of Justice to State Time of Next Jury Sittings.]—Where a justice tried the accused by consent, but did not inform him, as to the probable time of the next sittings of a court of competent jurisdiction, where he could be tried by jury : Held, on application for certiorari that the conviction could not stand. R. v. Williams, 10 C. C. C. 330, 2 W. L. R. 410.

8. **Speedy Trial** — R. S. Nova Scotia (1900) c. 195.]—Under sec. 2 of cap. 195, R. S.N.S. (1900) the prosecuting counsel appointed by the Attorney-General has power to conduct all criminal business which must be held to include all persons necessary to bring the prisoner to trial; and to make his election is one necessary act in those proceedings; the act therefore is wide enough to permit of the prosecuting counsel taking an election under Code sec. 766. R. v. Jodrey, 9 C. C. C. 477.

9. **Speedy Trial** — Code, ss. 765-2 — Right of Prisoner to Re-elect as to Mode of Trial.]—A prisoner who has been brought up for election as to the mode of his trial under the speedy trial sections of the Criminal Code, and has elected to be tried by a jury, may afterwards re-elect to be tried speedily by a Judge. Regina v. Prevost, 4 B. C. R. 326.

10. **Speedy Trial** — Right to Elect of Accused Admitted to Bail under Code S. 601.]—A person accused of an indictable offence who has been admitted to bail under Code, s. 601, by the magistrate before whom he is brought for preliminary examination upon the charge, has a right to a speedy trial under Code, s. 765, to the same extent as if the magistrate had committed him for trial under s. 596. Regina v. Lawrence, 5 B. C. R. 160.

11. **Speedy Trial** — Changing Charges from that for which Committed — Code Secs. 767-773.]—When once a prisoner has elected to be tried by a Judge he has no power of re-election. Judge should not, against the wish of a prisoner, give his consent to any change being preferred against the prisoner, unless it is clear that it may be more formally or differently

expressed, it is substantially the same charge as the one on which he was committed for trial, and on which he has been brought before a Judge and elected to be tried without a jury. R. v. CARRIERE, 6 C. C. C. 7, 14 Man. L. R. 52, 22 Occ. N. 187.

12. **Speedy Trial** — RIGHT TO RE-ELECT.—The accused having elected for speedy trial before the county court Judge under the Code, part LIV., the Judge has no discretionary power to allow the accused to withdraw the election made and obtain a trial by jury. REX v. KEEFER, 5 C. C. C. 122, 2 O. L. R. 572.

13. **Speedy Trial** — PREFERMENT OF INDICTMENT WITHOUT PRELIMINARY INQUIRY — NO RIGHT OF ELECTION — CODE SEC. 765-767.]—1. A waiver of the constitutional right of trial by jury can be made only by following out a compliance with all the statutory provisions in that behalf; 2. The only cases under the Code in which accused persons are allowed speedy trials are those in which the information has been laid before a justice charging an indictable offence triable at the General or Quarter Sessions, in which a preliminary enquiry has been made, depositions taken, and a committal for trial made. 3. If no election has been made before an indictment is returned founded on the facts disclosed in the depositions, the accused possesses no statutory right to demand a speedy trial. REX v. WENER, 6 C. C. C. 406.

14. **Speedy Trial** — ATTEMPT TO COMMIT RAPE — CODE SEC. 263-269.]—The warrant of commitment charged that the accused " did unlawfully assault with intent to carnally know." The accused wished to elect for speedy trial, but the Crown objected on the ground that the offence was really " an attempt to commit rape." Held, that where the depositions disclosed an attempt to commit rape and the Crown express the intention of laying the more serious charge, the accused will not be permitted to elect a speedy trial. REX v. PRESTON, 9 C. C. C. 201, 11 B. C. R. 159.

15. **Speedy Trial** — JURISDICTION — CODE SEC. 767.]—1. When the accused is not in custody at the time a true bill is found by the grand jury, or when the indictment is filed of record, or when he has been arraigned and pleaded, the forum becomes fixed, and jurisdiction is determinately established in the court where the record is filed. The case cannot then be removed from it even on consent of the Crown and the accused, since consent connot confer jurisdiction in criminal prosecutions. 2. Sub. 5 of Code sec. 767 applies to cases for re-election only, and not to a case where the accused has never been brought up for election and elected against a speedy trial in the first instance 3. A bill of indictment cannot, however, be preferred against a person in custody who has legally elected for speedy trial. R. v. KOMIENSKY, 6 C. C. C. 524.

16. **Summary Trial** — CODE SEC. 786.]—The option of a jury trial ought to be placed before the accused before the magistrate obtains consent to a summary trial. R. v. SHEPHERD, 6 C. C. C. 643.

17. **Waiver of Preliminary Investigation** — RIGHT TO SPEEDY TRIAL.]—A prisoner who waives a preliminary investigation cannot elect for speedy trial before the county court Judge. As no depositions are taken, there is no compliance with Code sec. 767 which requires the charge to be stated to the accused from the depositions. Rex v. ALFRED MCDOUGALL, 8 C. C. C. 234, 8 O. L. R. 30.

18. **Withdrawing** — AMENDING CHARGE]—Where a prisoner had pleaded not guilty to a charge and had elected to be tried by a jury and upon the charge being amended, pleaded not guilty to such amended charge, he was not allowed to withdraw his election and make a new one on the grounds that he had no right by law to be tried by a Judge in a summary way and that the charge as amended was substantially the same as that upon which he had made his election. THE QUEEN v. SKELTON, 4 Can. Crim. Cases, p. 467, 18 C. L. T. 205.

See also SPEEDY TRIAL — SUMMARY TRIAL.

ELECTIONS.

1. **Conviction of Deputy Returning Officer, Although not Formally Appointed.]**—The accused had received from the Returning Officer an appointment as deputy

signed by him, with the blank for the name not filled up, as required by sec. 30 of the Dominion Elections Act, R. S. C. c. 8. He acted as deputy returning officer at one of the polling booths during the whole of the day of the election. He was convicted under sub-sec. (c) of sec. 100 of the Act, for that he, being the deputy returning officer for that district, fraudulently put into the ballot box a number of ballots that he was not authorized to put in, and a case was reserved at the trial for the opinion of the court, as to whether the accused could under the circumstances properly be convicted of such an offence. Held, following Rex v. Gordon, 2 Leach 581; Rex. v. Holland, 5 T. R. 607, and Rex v. Dobson, 7 East, 218, that the accused, having acted in the office and having been deputy returning officer de facto on the day in question, was properly convicted of the offence charged. REGINA V. HOLMAN, 10 Man. L. R. 272.

2. **Misdemeanour** — UNLAWFUL VOTING AT ELECTIONS.]—A person who does an act which a statute on public grounds has prohibited generally is liable to an indictment for misdemeanour; and it is not necessary that the statute should prohibit such an act in express language. The defendant's name appeared on the voter's list used at the elections of a member of the House of Commons, but before such elections he lost his right to vote, but voted at the election without having at the time he so voted the qualifications prescribed by law :—Held, that he was guilty of a criminal offence, and was rightly indicted as for a misdemeanour. REGINA V. STURDY, 23 C. L. J. 87.

3. **Omitted Names from List** — DEMURRER TO AN INDICTMENT.]—The first count charged that the defendant, after having made the alphabetical list of persons entitled to vote, &c., made out a duplicate original of the said list, and certified by affirmation to its correctness, and delivered the same to the clerk of the peace, and that in making out the certified list so delivered to the clerk of the peace of persons entitled to vote, &c., the defendant did feloniously omit from the said list of the names, &c., which names of any or either of them ought not to have been omitted. The second count was nearly the same as the first, the word "insert" being used where the word "omit" was used in the first :—Held, that the omission charged having been from the certified list delivered to the clerk of the peace or "duplicate original" the words "said list," referring to the words "the certified list so delivered to the clerk of the peace" were a sufficient description to identify the list intended. REGINA V. SWITZER, 14 C. P. 470.

As to the objections that it did not appear that the persons whose names were charged to have been omitted, &c., were persons entitled to vote, &c. :—Held, that the words in the indictment were not a direct and specific allegation that those persons were entitled to vote. IB.

As to the objection that it was not alleged that the list was made up from the last revised assessment roll :—Held, that by the indictment it appeared that the assessment roll referred to was the assessment roll for 1863, and that it was sufficiently stated that the alphabetical list was made up for that year, and that the Crown would be bound to prove such a list. IB.

Held further, that both counts in the indictment were bad, as they should have shewn explicitly how and in what respects these names should or should not have been on the list, by setting out that they were upon or were not upon the assessment roll (as the case might be) or at any rate were or were not upon the alphabetical list. IB.

4. **Personation.**]—Falsely personating a voter at a municipal election is not an indictable offence. Remarks as to the form of the indictment in such a case. REGINA V. HOGG, 25 U. C. R. 66.

5. **Refusal to Administer Oath.**]—An indictment against a deputy returning officer at an election, for refusing, on the requisition of the agent of one of the candidates to administer the oath to certain parties tendering themselves as voters, was held bad on demurrer, for omitting the name of the agent. REGINA V. BENNETT, 21 C. P. 235.

In the same indictment another count charged defendant with entering and recording in the poll books the names of several parties as having voted, although they had refused to take the oath prescribed by law :—Held, not an indictable offence, being a creature of the statute, which also prescribed the penalty and the mode of enforcing it. Remarks upon the otherwise objectionable character of

the indictment, in setting out in the indictment itself, a reference merely made to the "said list." IB.

6. **Riots at Elections.**]—Under the statute for repressing riots at elections, no power is given to magistrates to convict summarily: the offenders must be tried by jury. FERGUSON V. ADAMS, 5 U. C. R. 194.

EMBEZZLEMENT.

1. **Agent.**]—The prisoner was convicted upon an indictment under 4 & 5 Vict. c. 25, s. 41, charging that one W., entrusted to him for a special purpose, viz., for the purpose of exhibiting to B. and obtaining another note made by prisoner to and indorsed by B.—the said prisoner then being the agent of W.—a promissory note made by prisoner payable to and indorsed by B., being a valuable security, without any authority to sell, transfer, &c., or convert the same to his own use; and that he unlawfully kept and converted it to his own use. It appeared that the prisoner gave an endorsed note, payable at Kingston, in payment of goods purchased, with an agreement that in case the payee should be unable to get it discounted at Kingston, he would procure for him a new note, with the same indorsers payable at Belleville. The payee being unable to get it discounted at Kingston, sent the note to W. at Belleville, with instructions to get a new note from the prisoner as agreed on; W., entrusted the prisoner with the note, on his promise that he would take it to the indorsers, and either return it or bring back a new note at once. The prisoner, however, kept the note, and neither returned it nor procured another, though often requested to do so both by the payee and W.:—Held, that the prisoner was not an agent within the meaning of the statute, and that the conviction must be quashed. REGINA v. HYNES, 13 U. C. R. 194.

Semble, also, that it could not be said that the prisoner was entrusted with the note without any authority to transfer or pledge the same; or that his retaining it was proof of converting it to his own use. IB.

2. **Agent.**]—The indictment charged that one M. entrusted to defendant, then being an agent, a promissory note of one R., for $200, for the special purpose of receiving six pounds sterling thereon from A. and that defendant, contrary to the purpose for which the said note was entrusted to him, did unlawfully negotiate and convert the same to his own use. It appeared that R. had made the note for A's accommodation, and A. being indebted to one C. in six pounds sterling, it was agreed that he should deposit this note with M. to secure the payment. Defendant, by C's order, got the note from M. on condition that he should give it up to A. on the six pounds sterling being paid. A afterwards paid this sum to defendant, but defendant kept the note and sued R. upon it, alleging that he was entitled to do so by some arrangement with R., which the jury found was not the case, and they convicted the defendant:—Held, that the conviction could not be sustained, for the defendant was not an agent within the meaning of the Act, which refers only to general agents of the description specified; and, semble, that upon the evidence he was not M.'s agent, or guilty of any breach of trust towards him. REGINA V. ARMSTRONG, 20 U. C. R. 245.

3. **Clerk.**]—The prisoner being a clerk in the Bank of Upper Canada, was placed in an office apart from the bank, and entrusted with funds for the purpose of paying persons having claims upon the government, which payments were made upon the cheque of the receiver-general, whose office was in the same building. While so employed a deficiency was discovered in his accounts, which he at first ascribed to a robbery, but he afterwards confessed that he had lent the moneys entrusted to him to various friends. It also appeared that on a certain day he had received a cheque from the receiver-general for £1439 15s. for coupons on government debentures held by the bank, and had credited himself in account with that sum as if paid out by him on the cheque, making no entry on the coupons, thus covering his deficiencies by so much, and making it appear that he had paid out the amount of the cheque in cash, when in fact he had paid nothing. The indictments contained two counts, the first charging that on, &c., the prisoner, being a clerk, then employed in that

capacity by the bank, did then and there in virtue thereof receive a certain sum, to wit, £1439 15s. for and on account of the said bank, and the said money feloniously did embezzle. The second, that he as such clerk received a certain valuable security, to wit, an order for the payment of the money, to wit, £1439 15s. for and on account of the said bank, and the said valuable security feloniously did embezzle. On this indictment he was convicted of embezzlement :—Held, that the prisoner had been guilty of embezzlement within Vict. 19 c. 121, s. 40; and the conviction was affirmed. REGINA v. CUMMINGS, 16 U. C. R. 15. Reversed on appeal, 4 L. J. 182.

Held, also, that the indictment was sufficient in form, the omission of the conclusion, contra formam statuti, being no objection. IB.

4. **Municipal Treasurer** — CIVIL PROCEEDINGS.]—On an indictment against a treasurer of a county for embezzling £9 14s. 10d., received for taxes, it appeared that defendant received the money in October, 1858, and resigned in February, 1859, when his books were taken from him by the warden, although the usual time for making up his account with the county, 31st of March, had not arrived. This sum was not entered in his books as received, nor was there any entry of other monies received for taxes at a later date; but after his books had been taken he sent in a list of monies received, including this, although before he did so it had been stated in a newspaper that this and other payments were not accounted for. There was no proof that he was indebted to the county on the whole of his accounts, and it was shewn that he claimed that they were in his debt; and that the question was pending before arbitration, to whom several civil suits between himself and the council had been referred. The jury found the defendant guilty :—Held, that the evidence did not warrant the conviction, and a new trial was granted. :—Held, also, that the money was not improperly charged to be the money of the county, though it was received from the township of Maidstone, and was to be accounted for to it by the county. REGINA v. BULLOCK, 19 U. C. R. 513.

5. **Municipal Treasurer** — ILLEGAL APPLICATION OF FUNDS.]—Semble, that the treasurer of a municipality may be indicted for an appropriation of the funds clearly contrary to law, even though sanctioned by a resolution of the council. MUNICIPALITY OF EAST NISSOURI, 16 U. C. R. 513.

Semble, that the treasurer of a municipality might be indicted for paying a member of the council for his attendance. IB.

6. **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. QUEEN v. TOPPLE, 3 R. & C., N. S. R. 566.

7. **Postmaster.**]—One D., being postmaster at Berlin, transmitted to defendant at Toronto several post-office orders payable there, which defendant presented and got cashed, but it appeared afterwards that the moneys thus obtained had never been received by D. for defendant, and that frauds to a large extent had been thus committed. Defendant having been convicted upon an indictment, which charged him with unlawfully, fraudulently, and knowingly obtaining from our Lady the Queen, with intent to defraud :—Held, that the indictment was good; that the 56th section of the Post Office Act, C. S. C. c. 31 was not applicable to the case; that the money was properly charged to be the money of the Queen, not of the postmaster; and that it was unnecessary to allege an intent to defraud any particular person. Remarks as to the extensive nature of the provision on which the indictment was framed, C. S. C. c. 92, s. 73. Semble, also, that defendant might also have been properly convicted under another count of the in-

dictment, charging him with having obtained the money by false pretences. REGINA v. DESSAUER, 21 U. C. R. 231.

8. **Property not in Prosecutor.**]—The prisoner was apprentice to a baker, and had authority from his master to deliver bills for bread to customers, and receive the amounts. In payment of one account he received a bank cheque, payable to his master "or order," upon which he forged his master's name, and received the money from the bank. :—Held, on these facts, that he could not be convicted on an indictment charging that he did, by virtue of his employment, as the servant of A. B., take into his possession a certain sum of money, for and on account of the said A. B. ,and did feloniously embezzle the said money, so being the property of the said A. B., the money received by the prisoner never having been the property of A. B. by reason of the forgery, but the property of the bank; and not having been received by virtue of the prisoner's employment as the servant of A. B. REGINA v. HATHEWAY, 6 All., N. B. R. 382.

See Dominion Statute, 32 & 33 Vict. c. 21, s. 70, which omits the words "by virtue of such employment."

9. **Suspension of Civil Right of Action**—MONEY HAD AND RECOVERED.]—In an action for money had and received :—Held, that an exemplification of an indictment upon which defendant had been convicted of embezzlement, but acquitted on a charge of larceny, was admissible to shew that defendant had been acquitted of the felony, so that the civil action could lie. MACDONALD v. KETCHUM, 7 C. P. 484.

10. **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 it. FERRIS v. IRWIN, 10 C. P. 116.

11. **Trust** — PARTNERSHIP — IMPERIAL ACT.]—The Imperial Act, 20 & 21 Vict. c. 54, s. 12, provides that "nothing in this Act contained, nor any proceeding conviction or judgment to be had or taken thereon against any person under this Act, shall prevent or lessen, or impeach any remedy at law or in equity, which any party aggrieved by any offence against this Act might have had if this Act had not been passed....; and nothing in this Act contained shall affect or prejudice any agreement entered into, or security given by any trustee, having for its object the restoration or repayment of any trust property misappropriated" :—Held, that the class of trustees referred to in said Act were those guilty of misappropriation of property held upon express trusts. Semble, that the section only covered agreements or securities given by the defaulting trustee himself. Quære, is the said Imperial Act in force in British Columbia ? If in force it would not apply to a prosecution for an offence under R. S. C. c. 164 (The Larceny Act), s. 58. An action was brought on a covenant given for the purpose of stifling a prosecution for the embezzlement of partnership property under R. S. C. c. 164, s. 58, which was not re-enacted by the Criminal Code, 1892 :—Held, that the alleged criminal act, having been committed before the Code came into force, was not affected by its provisions and the covenant could not be enforced. Further, the partnership property not having been held on an express trust the civil remedy was not preserved by the Imperial Act. MAJOR v. MCCRANEY, 29 S. C. R. 182.

ENGLISH LAW.

1. Where the provisions in the Canadian Criminal Code are taken from the law of England the court will be guided by English decisions for their interpretation, and not by French authorities where they differ from English decisions in the same matters. REGINA v. AUTHIER, 1 C. C. C. 68.

See also CONSTITUTIONAL LAW.

ERROR.

1. **Court of Appeal.**]—Error as distinguished from appeal, will lie in a criminal case from the court of error and appeal to the Queen's bench and the writ of error may be as nearly as possibly in the form of a writ of appeal given by the

orders of the court published in 1850. REGINA v. WHELAN, 28 U. C. R. 108. See S. C. 28 U. C. R. 2.

Appeals under C. S. U. C. c. 113, s. 29, as distinguished from error are in criminal cases confined to such as arise under the Act respecting new trials in criminal cases. 20 Vict. c. 61. IB.

2. **Defect in Indictment.**]—The court will not arrest judgment after verdict or reserve it in error, for any defect patent on the face of the indictment, as by 32 & 33 Vict. c. 29, s. 32, such defect must be objected to by demurrer, or by motion to quash the indictment. REGINA v. MASON, 22 C. P. 246.

3. **Jury.**]—Irregularities in its choice or constitution. See Post sub-head 5.

4. **Police Court.**]—Whether the police court is a court of justice within 32 & 33 Vict. c. 21, s. 18, or not, is a question of law which may be reserved by the Judge at the trial, under C. S. U. C. c. 112, s. 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 or error. REGINA v. MASON, 22 C. P. 246.

5. **Objections to Indictment.**]—The Attorney-General refused his fiat for a writ of error in this case, upon objections taken to the indictment. REGINA v. GREENWOOD, 23 U. C. R. 256, note A.

6. **Right to have Committment Reviewed.**]—29 & 30 Vict. c. 45 had in view and recognizes the right of every man committed on a criminal charge to have the opinion of the Judge of the superior court upon the cause of his committment by an inferior jurisdiction. REGINA v. MOSIER, 4 P. R. 64.

7. **Sessions.**]—The proper proceeding to reverse a judgment of the court of quarter sessions is by writ of error, not by certiorari and habeas corpus. REGINA v. POWELL, 21 U. C. R. 215.

ESCAPE.

1. **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 the 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 magistrate until finally disposed of by committment to custody or discharge on bail; and that the conviction was proper. REGINA v. SHUTTLEWORTH, 22 U. C. R. 372.

See also PRISON BREAKING.

EVIDENCE.

I. ACCOMPLICE.
II. ADMISSIONS.
III. CHARACTER EVIDENCE.
IV. COMPETENCY OR COMPELLABILITY
V. CONFESSIONS.
VI. CORROBORATION.
VII. DEPOSITION EVIDENCE.
  1. Coroner's Inquest.
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VIII. DOCUMENTS.
IX. DYING DECLARATIONS.
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XI. EXTRADITION CASES.
XII. IMPROPER ADMISSION OR REJECTION OF.
XIII. ONUS OF PROOF.
XIV. PRISONER.
XV. RELEVANCY.
XVI. REBUTTAL.
XVII. WEIGHT OF.
XVIII. MISCELLANEOUS.

I. ACCOMPLICE.

1. **Accessory After the Fact.**]—Upon a trial for murder it appeared that the de-

ceased 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 that 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 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. c. 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, 38 U. C. R. 218.

2. **Accomplice.**]—Where the only evidence on a charge of playing in a common gaming house, is the evidence of an accomplice who has received money to testify against the accused, the conviction will be set aside on appeal. R. v. AH JIM, 10 C. C. C. 126.

3. **Confession of Accomplice.**]—In an action of trespass for false imprisonment, the defendant pleaded that a felony had been committed, and he had reasonable grounds to suspect the plaintiff, and therefore arrested and detained him until he was taken before a magistrate :—Held, that the confession of a third person that he, together with the plaintiff, committed the felony, was not adimssible in evidence as proof of the felony. BLAIR v. HOPKINS, 1 Kerr, N. B. R. 540.

4. **Corroboration.**]—Semble, that a conviction on an indictment for conspiracy to procure by fraud the return of one F. to the Legislative Assembly, 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. REGINA v. FOLLOWES, 19 U. C. R. 48.

5. **Corroboration.**]—Remarks as to the application to civil causes of the practice in criminal cases regarding the corroboration of accomplices. See Re Monteith Merchants' Bank v. Monteith, 100 R. 529; United Express Company v. Donohoe, 14 O. R. 333.

See also SPECIFIC OFFENCES, SUB-TITLE IX., POST — INTOXICATING LIQUORS — JUSTICE OF THE PEACE.

6. **Cautioning Jury.**]—A conviction of a prisoner for horse-stealing upon the uncorroborated evidence of an accomplice, was held legal, although the Judge did not caution the jury as to the weight to be attached to the evidence. REGINA v. BECKWITH, 8 C. P. 274.

7. **Cautioning Jury.**]—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. REGINA v. SEDDONS, 16 C. P. 389.

In this case being an indictment for soliciting R. 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, when 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. IB.

8. **Cautioning Jury.**]—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.

II. ADMISSIONS.

1. **Admission of Prisoner** — CONFESSION — CONSTABLE — CAUTION.]—The prisoner was arrested on a charge of stealing S's. gun, and in answer to questions put to him by a constable, who did not caution him, he made certain statements; he was afterwards charged with the murder of S., and on his trial the Crown sought to put in evidence his answers :—Held, not admissible. REX v. KAY, 11 B. C. R. 157.

2. **Admission** — STATEMENT BY PRISONER.]—The provisions of s. 32 of 32 and 33 Vict. (Can.) c. 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., 1 B. C. R., pt. I., 1.

3. **Declaration of Prisoner Before Being Charged With Crime.**]—A declaration made by a prisoner, tried on an indictment for larceny, before he was charged with the crime, in answer to a question asked him, where he got the property, is evidence on his behalf. On the trial of an indictment for larceny of a watch, the prisoner's counsel called a witness W., who stated that the prisoner was drinking at a public house on the evening when the alleged offence was committed, and had the watch with him; that W. went home with the prisoner, and they sat down in the house, that while they were sitting there, the prisoner fell upon the floor and the watch fell out of his pocket, and W. picked it up and asked him where he got it. His answer to this question was rejected. The prisoner being convicted, it was held by the court on a case reserved, that the evidence should have been received, and the conviction was quashed. REGINA v. FERGUSON, 3 Pug. N. B. R. 612.

4. **Husband and Wife** — INDICTMENT — ADMISSION OF ONE — ADMISSIBILITY OF — RIGHT TO SEPARATE TRIALS — CODE SEC. 592-661.]—1. By sec. 592 of the Code the prosecution can give in evidence any admission, or confession or any other statement of accused; it need not appear that it is a plenary confession, if it connects or tends to connect the accused directly or indirectly with the commission of the crime. 2. Where it is admissible against one of two prisoners jointly indicted, it is the right of the accused against whom it is admissible to have it given in toto, including names of the defendants. 3. Counsel for the Crown acting on behalf either of the Attorney-General or Solicitor-General, has the right of reply even though no evidence was called on behalf of the accused. 4. Such an admission or confession is not evidence against anyone but the persons making it, and it is the duty of the trial Judge to warn the jury not to pay the slightest attention to it except so far as it goes to affect such person. Owing to the effect such admission has on the mind of the jury, where the Crown intends to make use of it, the prisoners should be tried separately. REX v. MARTIN 9 C. C. C. 371, 9 O. L. R. 218.

5. **Statement of Accused at Preliminary Enquiry.**]—A statement made upon oath at the prisioner's request at a preliminary inquiry after the formal caution that any voluntary statement would be taken down in writing and would be given against him at the trial, is so admissable. THE QUEEN v. SKELTON, 4 C.C.C., 467, 18 C.L.T. 205.

6. **Statement by Prisoners.**]—Section 32 of the Act 32 & 33 Vict. c. 30, is direc-

tory, and a statement made by a prisoner as provided for by that Act, may be used in evidence against him, although the justice has 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. REGINA v. SOUCIE, 1 P. & B., N. B. R. 611.

7. Where the accused on his examination before the magistrate, admitted the acts charged, which prima facie amounted to robbery (one of the crimes enumerated in the treaty), and alleged by way of defence matter of excuse which was of an equivocal character :—Held, that the magistrate could not try the case, but was bound to commit the accused for trial before the tribunals of the foreign country. IN RE BURLEY, 1 C. L. J. 34.

If the magistrate sitting on a similar charge if committed in Canada would commit for trial, he is equally bound to commit for trial in the foreign country where the offence, if any, has been committed. IB.

The warrant for committal till surrendered under the treaty need not set out the evidence taken before the committing magistrate, nor shew any previous charge made in the foreign country or requisition from the government of that country, or warrant from the Governor-General of Canada, authorizing and requiring the magistrate to act. IB.

The adjudication of the committing magistrate as to the sufficiency of the evidence for committal may be by way of recital in the warrant of commitment. IB.

It is not necessary to the jurisdiction of a magistrate in Canada, acting under the treaty and statutes, either that a charge should be first laid in the United States, that a requisition should be first made by the government of the United States upon the Canadian government, or that the Governor-General should first issue the warrant requiring magistrates to aid in the arrest of the fugitives; in other words, the charge may be originated before the magistrate in Canada. IB.

III. CHARACTER EVIDENCE.

1. **Accused as Witness** — PREVIOUS CONVICTIONS — RELEVANCY.]—It is permissible to cross-examine a prisoner called as a witness in his own behalf as to previous convictions. This is relevant as going to the credit of the witness and as authorized by Sec. 695 of the Criminal Code. REX v. D'AOUST, 5 C. C. C. 407, 3 O. L. R. 653.

2. **Admissibility of Evidence of Bad Character of Accused on Examination-in-Chief.**]—Generally in criminal proceedings the fact that the person accused has a good character is deemed to be relevant, as it raises a doubt and an improbability that he has conducted himself as alleged, while the fact that he has a bad character is deemed to be irrelevant, unless evidence of good character has been given when it is admissible to rebut such evidence by a contrary proof of bad character. The prosecution cannot make evidence of bad character part of its original case, as it is not at this stage a fact either in issue, or relevant to the issue; such evidence having been given in examination in chief a new trial was ordered. REX v. WILLIAM LONG, 5 C. C. C. 493, Q. R. 11, K. B. 328.

3. **Certificate of Previous Conviction.**] Quære, whether a certificate of a prievous conviction is sufficient prima facie evidence of the identity of the accused with the person of the same name so previously convicted. REGINA v. EDGAR, 15 O. R. 142.

4. **Character** — PRIOR CONVICTION.] 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, &c., 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, s. 26 of C. 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. REGINA v. TRIGANZIE, 15 O. R. 294.

5. **Foreign Language** — TRANSLATION— DOCUMENTS — EXTRACTS FROM REGISTERS — EVIDENCE OF BAD CHARACTER.]— A conviction for murder will not be set aside because the evidence of witnesses for the prosecution, given in a language of which the defendant was ignorant, was not translated to him, where he was defended by counsel speaking and thoroughly acquainted with the language of the witnesses, and where neither the defendant nor his counsel asked that the evidence be translated. 2. Section 19 of the Canada Evidence Act, 1893, which requires thnt ten days' notice shall be given to the prisoner before the trial, of the intention to procure certain documents, does not apply to certified extracts from the registers of acts of civil statutes, which were produced merely to explain the alias of the person killed. Such extracts are admissible without notice. 3. Evidence of bad character or of misconduct of the prisoner, not relevant to the issue before the court, can only be introduced by the Crown in reply or rebuttal. The admission of such evidence as part of the case for the prosecution, before any evidence of good character has been adduced for the defence, is improper, irregular, and illegal, and constitutes sufficient ground for setting aside the conviction. The illegality is not covered by the failure of the prisoner or his counsel to object to the evidence at the time, or by the fact that his counsel cross-examined the witnesses on their statements.4. Even after evidence of the prisoner's good character has been made by the cross-examination of Crown witnesses, the prosecution is only entitled to prove his general reputation and not particular acts of misconduct. REX v. LONG, Q. R. 11, K. B. 328.

6. **Of Previous Offences to Show Guilty Knowledge.**]—Whilst the fact of a prisoner having committed other similar offences is not relevant to the question whether he committed the act of which he is accused, yet, so soon as the act has been fully established, evidence of previous offences may be relevant to his state of mind in committing the act; it is admissible to show guilty knowledge and to prove the intention to commit a wrong. REX v. KOMIENSKY, 7 C. C. C. 27, Q. R. 12 K. B. 463.

7. **Proof of Prior Conviction.**]—Per Bain, J. — The certificate of the former conviction put in was insufficient, because it nowhere stated that the conviction had been made under the provisions of the Liquor License Act. Per Killam, J. — Although the certificate of the former conviction omitted the word "intoxicating" before the word "liquor" in describing the offence, yet it was not defective on that account in view of sections 151 and 182 of the Act and the wording of the form in Schedule K (par. 2). REGINA v. HERRELL, 12 Man. L. R. 198.

8. **Proof of Prior Conviction.**]—Before a conviction for a second offence under the Liquor License Act, it is necessary to prove the identity of defendant, with the person named in the certificate of the former conviction, and neither the similiarity of names nor the personal knowledge of the magistrate will be sufficient for that purpose. Queen v. Lloyd, (1873) 1 Cox C. C. 51, followed. Regina v. Brown, (1886) 16 O. R. 41, distinguished. REGINA v. HERRELL, 12 Man. L. R. 198.

9. **Prostitution** — EVIDENCE OF REPUTATION OF BAWDY 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, 20 O. R. 489.

10. **Rape** — AIDING AND ABETTING — CHARACTER EVIDENCE OF PROSECUTRIX— REFUSAL OF WITNESS TO ANSWER.]—1. The prosecutrix may be asked questions to show her general character of chastity is bad. She is bound to answer such questions, and if she refuses the fact may be shown. She may also be asked whether she had previously had connection with the prisoner, and if she denies, it may be shown. She may also be asked, but is not generally compellable to answer, whether she has had connection with persons other than the prisoner. 2. Where, however, a witness for the prose-

cution other than the prosecutrix, is asked if he has had connection with the prosecutrix, the question having a wider tendency in his case, affecting as it does his bias or partiality, as a witness, he is compellable to answer it. R. v. FINNESSEY, 10 C. C. C. 347.

11. **Testimony of Accused** — CROSS-EXAMINATION — PREVIOUS CONVICTIONS — An accused person, who on his trial for an indictable offence is examined as a witness on his own behalf, is, except so far as he may be shielded by some statutory protection, in the same situation as any other witness as regards liability to and extent of cross-examination, and may be cross-examined as to previous convictions. REX v. D'Aoust, 22 Occ. N. 228, 3 O. L. R. 653, 1 O. W. R. 344.

12. **When Admissible.**]—While the law does not allow evidence of general bad character to be adduced in the first instance as a criminative circumstance, it is competent to prove particular facts which are of a nature to show a motive, even when they may injuriously affect reputation. REX v. BARSALON, 4 C. C. C. 347.

See also ADMISSIONS SUPRA.

IV. COMPETENCY OR COMPELLABILITY.

1. **Action to Revendicate Moneys Seized** — CANADA EVIDENCE ACT.]—In an action to revendicate moneys seized on execution of a warrant issued under Code s. 575, the rules of evidence prevailing in the province would apply and the plaintiff could not invoke "The Canada Evidence Act, 1893" so as to be a competent witness in his own behalf in the Province of Quebec. O'NEIL v. ATTORNEY-GENERAL OF CANADA, 26 S. C. R. 122, 1 C. C. C. 303.

2. **Answers Tending to Criminate** — CLAIMING PRIVILEGE.]—The prisoner, being a manager of a branch store for the sale of goods supplied by a factory of his employers, arranged with the checker at the factory to load certain goods on a waggon going to the branch, store, without keeping the usual check on them which his employers' system demanded, and had the goods delivered to a customer of his branch :—Held, that he was properly convicted of theft as defined by the Criminal Code. If a witness when called upon to testify does not object to do so upon the ground that his answers may tend to criminate him, his answers are receivable against him (except in the case provided for by s. 5 of the Canada Evidence Act, 1893, as amended by 61 v. c. 53,) in any criminal proceedings against him thereafter, but if he does not object he is protected. REX v. CLARK, 22 Occ. N. 90, 3 O. L. R. 176.

3. **Assault.**]—The prisoner was indicted for an indecent assault. At the close of the case for the Crown the prisoner tendered himself as a witness in his own behalf. The Judge at the trial ruled that as upon the evidence adduced an indecent assault had been proved the prisoner could not be a witness, but reserved the point for the opinion of the Court of Queen's Bench, and that court affirmed the conviction. REGINA v. McDONALD, 30 C. P. 21 (n).

4. **Assault.**]—Where a prisoner was indicted under 32 & 33 Vict. c. 20, s. 47 (D), for an assault occasioning actual bodily harm :—Held, that he could not be deemed to be on his trial on an indictment for a common assault, so as to entitle him to be admitted and give evidence as witness on his own behalf, under 41 Vict. c. 18, S. 1 (D.) REGINA v. BONTER, 30 C. P. 19.

5. **Canada Evidence Act** — SEC. 5 — PRIVILEGE.]—A Crown witness claimed privilege from answering certain questions on an indictment for theft, as he himself was charged jointly with another as a receiver of the stolen articles, and his answers might incriminate him. :—Held, that inasmuch as he was not a party to the indictment submitted to the jury, he could not be relieved from answering, though he was entitled to have his objection noted, and the evidence would not then be receivable against him on his trial. R. v. McLINEHY, 2 C. C. C. 416.

6. **Co-Defendants** — COMPETENT BUT NOT COMPELLABLE WITNESSES.]—One co-defendant cannot be compelled to give evidence on behalf of another co-defendant, but he may tender his evidence

and is then a competent witness. REGINA v. CONNORS ET AL, 5 C. C. C. 70, 3 Q. Q. B. 100.

7. **Competency of Accused.**]—REGINA v. DRAIN, 8 Man. L. R. 535.

8. **Convict.**]—A writ of habeas corpus ad testificandum may be issued to the warden of the provincial penitentiary to bring a convict for life before a court of oyer and terminer and general gaol delivery, to give testimony on behalf of the Crown in a case of murder. REGINA v. TOWNSEND, 3 L. J. 184.

9. **Defendant** — COMPELLABILITY OF — TO GIVE EVIDENCE FOR PROSECUTION — ONTARIO LIQUOR ACT.]—A defendant in a prosecution for illegal selling of liquor under the Ontario License Act, is a compellable witness for the prosecution, even though evidence has been adduced tending to show the illegal acts and failed. R. v. NURSE, 2 C. C. C. 57, 35 C. L. J. 35.

10. **Drunkenness.**]—On the trial of an offence of being "unlawfully found drunk on the public street" contrary to the provisions of a municipal by-law, the magistrate cannot refuse to receive the defendant's evidence. REGINA v. GRANT, 18 O. R. 169.

11. **Failure to Ask Privilege.**]—If a party entitled in civil proceedings to be excused from answering questions on the ground that the answers would tend to criminate him, fails to claim his privilege, his evidence is deemed voluntary. REGINA v. DOUGLAS ,1 C. C. C. 221, 11 Man. L. R. 401.

12. **Husband and Wife** — COMPETENCY OF WITNESS — "COMMUNICATION" — STATUTE — PRIVILEGE — DIRECTIONS BY LEGAL ADVISER — REFERENCE TO HANSARD DEBATES — METHOD OF INTERPRETATION.]—Under the provisions of the Canada Evidence Act, 1893, 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; Mills, J., dissenting. Evidence by the wife of a person accused, of acts performed by her under directions of his counsel, sent to her by the accused to give directions, is not a communication from the husband to his wife in respect of which the Canada Evidence Act forbids her to testify ; Mills, J., dissenting. Per Girouard, J., (dissenting). The communications between husband and wife contemplated by the Canada Evidence Act, 1893, may be de verbo, de facto or de corpore. Sexual intercourse is such a communication, and in the case under appeal neither the evidence by the accused that bloodstains upon his clothing were caused by having such intercourse at that time when his wife was unwell, nor the testimony of his wife in contradiction of such statement as to her condition, ought to have been received. Per Mills, J., (dissenting) :—Under the provisions of the Canada Evidence Act, 1893, and its amendments, the husband or wife of an accused person is competent as a witness only on behalf of the accused and may not give testimony on the part of the Crown. Per Taschereau, C. J. : The report of debates in the house of Commons are not appropriate sources of information to assist in the interpretation of language used in a statute. GOSSELIN v. THE KING, 23 Occ. N. 210, 33 S. C. R. 255.

13. **Husband and Wife** — PRESUMPTION OF CONTINUANCE OF LIFE.]—Complainant laid a charge against her husband under sec. 210 (2) of the Criminal Code for refusing to supply necessaries, etc. The evidence shewed that she had previously been married to a man with whom she had not cohabited. Two years before her marriage with defendant complainant had received a letter from some one stating that the former husband was dying in a hospital in Rochester, and nothing further was heard till one year after her marriage with defendant, at which time she first heard her husband was dead :—Held, that there was evidence to go to the jury on which they might find that at the time of the second marriage of complainant to defendant, the complainant's first husband was dead. Conviction therefore affirmed. R. v. HOLMES, 2 C. C. C. 132, 29 O. R. 362.

14. **Husband and Wife** — CANADA EVIDENCE ACT — THIRD PARTY PRESENT.]—The wife of the accused cannot give evidence of a communication made by her husband to a third party in her presence. R. v. WALLACE, 6 C. C. C. 323.

15. **Joint Indictment of Husband and Wife for Murder** — EVIDENCE — AD-

MISSION OR CONFESSION OF WIFE IMPLICATING HUSBAND — ADMISSIBILITY IN WHOLE — CAUTION TO JURY — NO EVIDENCE AGAINST HUSBAND — COUNSEL REPRESENTING ATTORNEY-GENERAL — RIGHT OF REPLY WHERE PRISONERS ADDUCE NO EVIDENCE.]—Two prisoners tried jointly for the murder of their infant son. The matron of the gaol gave as evidence the confession of the wife in the police station after being cautioned. Argued, the evidence could not be given at their joint trial as the husband was not there when confession was made. Falconbridge, C. J., admitted the evidence at the trial, but informed the jury it was not evidence against the male prisoner. At the request of the male prisoner the case was reserved for the opinion of the Court of Appeal upon the following questions :—1. Was the alleged statement of the female prisoner to the witness, the gaol matron, properly admitted as evidence when the prisoners were tried together ? 2. No evidence being adduced by either prisoner, had the counsel for the defence the right of reply ? Falconbridge, C. J., ruling at trial that the counsel for the Crown, who claimed to be acting on behalf of the Attorney-General, had the right of reply :—Held, as to the first question, that the evidence was properly admitted, and as to the second question, until Parliament sees fit to withdraw the right of reply, the Crown, through its representative, can assert the privilege. And it must be left to counsel, in the judicious exercise of his discretion, to decide whether he will claim it. REX v. MARTIN, 5 O. W. R. 317, 9 O. L. R. 218.

16. **Judge** — JUROR.]—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, 20 O. R. 317.

17. **Offences under By-Law.**]—On the trial of an offence against a city by-law in the erection of a wooden 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.

18. **Practising Medicine.**]—Upon trial of an information for practicing contrary to the provisions of the Ontario Medical Act, R. D. O. 1877, c. 142 :..Held, following Regina v. Roddy, 41 U. C. R. 291, that the defendant was properly rejected as a witness in his own behalf. REGINA v. SPARHAM, 8 O. R. 570.

19. **Presiding Magistrate.**] — Calling magistrate as witness in prosecution under the Canada Temperance Act, 1878, with a view of shewing his interest in the prosecution. See REGINA v. SPROULE, 14 O. R. 375.

20. **Prisoner Acquitted.**]—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 co-prisoner. Semble, not unless it appear 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 being an indictment for arson, it could not be said that 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. REGINA v. HAMBLY, 16 U. C. R. 617.

21. **Prisoner** — PRISONER'S WIFE.] — The defendant on his trial upon an indictment cannot give evidence for himself, nor can his wife be admitted as a witness. REGINA v. HUMPHREYS, 9 U. C. R. 337.

22. **Privilege** — PROSECUTOR SWEARING OUT INFORMATION — REFUSED TO ANSWER AS TO PLACE AND DATE OF SWEARING.]—A person who swears out an information purporting to be sworn at a particular time and place, is not privileged from answering on cross-examination questions tending to show such information was not sworn at the time and place it purported to be. EX PARTE SONIER, 2 C. C. C. 123, 34 N. B. R. 84.

23. **Prisoners Severing.**] — 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, 22 U. C. R. 499.

24. **Proof of Handwriting** — PRISONER A WITNESS — CANADA EVIDENCE ACT.]—Where a prisoner testifies on his own behalf he cannot be ordered to write a specimen of his own handwriting to be used in evidence against himself. The Canada Evidence Act does not contemplate that a prisoner could be forced to give new, real or objective evidence against himself. R. v. GRINDER, 10 C. C. C. 335.

25. **Refusal to Answer Questions Tending to Incriminate.**]—A witness other than the defendant, or the husband or wife of the defendant, may lawfully refuse to answer a question, where such answer would tend to subject the witness to a prosecution under the Ontario Liquor License Act, notwithstanding sec. 115 of said Act provides that a material witness may be committed for refusing to answer any question touching the case. RE ASKWITH, 3 C. C. C. 78, 31 O. R. 150.

26. **Rejection of Defendant's Evidence**—APPEAL — CERTIORARI.]—The defendant was convicted before two justices of the peace under the Weights and Measures Act, 42 Vict. c. 16, s. 14, s.-s. 2 (D) as amended by 47 Vict. c. 36, s. 7 (D) of obstructing an inspector n 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 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. REGINA v. DUNNING, 14 O. R. 52.

27. **Trader's By-law.**]—The defendant was convicted of selling and delivering teas as the agent of R. W., a non-resident of the county, in violation of a by-law of the county of Bruce, the third section c. 40 (O). The defendant, against the protest of his counsel, was called as a witness, and swore that he bought the tea in question from one W. of the City of London, and that he did not sell as the latter's agent, but on his own account; that he had formerly sold tea on commission for W, but purchased that in question for the purpose of evading the by-law. The conviction alleged that defendant was the agent of R. W., but did not state that he had not the necessary license to entitle him to the act complained of :-Held, 1.-That the defendant being, under the evidence, an independent trader, and not an agent, did not come within the Consolidated Municipal Act, 1883, s. 495, s.-s. 3, nor within 48 Vict. c. 40 (O.). 2.—That defendant had been improperly compelled to give evidence against himself. 3.—That the having a license is a matter of defence, and not of proof by the prosecution. REGINA v. McNICOL, 11 O. R. 659.

V. CONFESSIONS.

1. **Admissibility of** — WHERE INDUCED BY FALSE STATEMENT OF DETECTIVE.]—Accused was charged with stealing a post-letter from a box oi his former partner under sec. 326 (6) of the Code. A detective and assistant post inspector interviewed the accused, and during the interview the detective stated that he (the accused) had been seen taking the letter, which was admitted to be untrue on cross-examination. :—Held, that whatever justification there might be for a person in authority endeavouring to worm a confession out of a suspected person, there was certainly no jusitfication or such a resort to falsehood. The statement " you might as well own up as to have it brought out in a court of justice " made to the accused was equivalent to " If you do not tell us, it will be brought out in a court of justice ". Such a threat made by a person in authority renders the confession inadmissible. R. v. MACDONALD, 2 C. C. C. 221.

2. **Admissibility of** — CODE SEC. 480-430.]—1. In regard to the admissibility of an alleged confession or admission of an accused person it is for the prosecution to establish that the statement was made entirely free and voluntary; this should be proved by negativing the possible inducements by way of hope or fear which would render the admission inadmissible. 2. On a speedy trial before a single Judge the improper admission of evidence, which if a jury were present might be sufficient to secure a new trial, will not be held to have necessarily influenced the Judge's decision in regard to the other evidence. The Judge himself would be the best authority as to whether it did, and where he certifies as to what evidence he based his judgment upon, a new trial will not be ordered. 3. Section 480 (b) of the Code comprises the offence of taking possession of a counterfeit token of value; where a document is a forged bank note within the meaning of sec. 430, it may also be a counterfeit token of value. The taking possession of it may have been made punishable under sec. 480, and yet the having of it in possession may also be an offence under sec. 430. REX v. TUTTY, 9 C. C. C. 544.

3. **Admissibility of.**]—In order that a confession of a prisoner may be admissible it must be proved affirmatively to the satisfaction of the trial Judge, that it was made freely and voluntarily, and not in response to any threat or suggestion of advantage to be inferred either directly or indirectly used by a person in a position of authority in connection with the prosecution. R. v. RYAN, 9 C. C. C. 347, 9 O. L. R. 137.

4. **Admissibility of Confession of Guilt.**]—The burden is on the Crown to prove that an accused's confession of guilt made to a person in authority was free and voluntary. REGINA v. PAH-CAH-PAH-NE-CAPI, 4 C. C. C. 93, 17 C. L. T. 306.

5. **Admissibility** — STATEMENT TO PERSON IN AUTHORITY.]—Several church choir boys were implicated in an alleged assault on a Chinese boy, and a few days later the rector of the church held an inquiry, and calling the boys separately into the vestry from another room where they were detained in charge of the verger he told them they were to speak the truth and that their statements were to be used for the purpose of that inquiry only. He took their statements in the presence of the Bishop and the choir-master. One of the boys was afterwards tried for assault :—Held, on the trial, that the rector was a person in authority, and the statement was not voluntary and so not admissible in evidence. REX v. ROYDS, 24 Occ. N. 283, 10 B. C. R. 407.

6. **After Arrest** — WARNING.]—Where the alleged confession or admission was made after arrest it is not sufficient for the prosecution simply to show that no inducement was put forward by way of promise or threat, express or implied; since the arrest and charge are in themselves a challenge to the accused to speak; an inducement within the rule. To be admissible, the accused ought to be warned, and made to understand, that he was being questioned with the object of extracting admissions to be used against him. R. v. KAY, 9 C. C. C. 404, 11 B. C. R. 157.

7. **Confession by Accused in Custody.**]—Admissions made by an accused in custody to an officer in charge, even in response to questions, may be received if the presiding Judge is satisfied that they were not unduly or improperly obtained, which depends upon the circumstances of each case. REGINA v. ELLIOTT, 3 C. C. C. 95, 31 O. R. 14.

8. **Evidence Admitted and Afterwards Struck Out** — IMPANELLING NEW JURY—NEW TRIAL.]—The prisoner, an Indian, was found guilty of wounding with intent to murder. On the 2nd day of the trial the Crown introduced evidence of seven alleged confessions which the prisoner had made to the police at various times. Objection was made but the trial Judge allowed the evidence to go in. On the 3rd day of the trial the Judge stated to the jury, that he had more fully considered the objections of prisoner's counsel, and had come to the conclusion that several of the confessions were inadmissible as having been obtained by holding out a hope of clemency. He directed the jury to wholly disregard the evidence of such confession :—Held, on appeal that the jury should have been discharged, and a fresh jury impanelled; that the conviction should be quashed, and a new trial be granted, that a full court could not determine on the motion for a new

trial the question of the admissibility of the alleged confessions. R. v. SONYER. 2. C. C. C. 501.

9. **Employment of Detectives to Obtain.**]—The prisoner being suspected of having been guilty of the murder of G., but not being under arrest, detectives associated with him, worked themselves into his confidence, and, by representing to him that they were members of an organized gang of criminals engaged in profitable operations, induced him to seek for admission to their ranks. They then intimated to him that he must satisfy them that he was qualified for such admission by shewing that he had committed some crime of a serious nature, whereupon, according to their evidence, he asserted that he had killed G. as the result of an altercation. The detectives were not peace officers, no charge was then pending against the prisoner, nor did he know that the detectives were such :—Held, that 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; that both these grounds of objection were wanting in this case, and that, therefore, the evidence of the confession was rightly received. REX v. TODD, 21 Occ. N. 417, 13 Man. L. R. 364.

10. **Inducement** — PERSON IN AUTHORITY.]—A confession is not involuntary only because is it brought about by an inducement that is not connected with the charge and where the inducement is held out by a person not having or supposed to have authority. THE KING v. TODD, 4 C. C. C., 514, 13 Man. L. R. 364, 21 Occ. N. 417.

11. **Inducement by Peace Officer** — NEW TRIAL — CODE SEC. 227-231.]—Prisoner made an admission to a peace officer under inducements after her arrest, and a short time after (within an hour) made a similar confession or admission to a Crown officer without such last mentioned officer holding out any inducement, the last confession being voluntarily made :—Held, that under the circumstances the last admission was inadmissible as having been suggested by the peace officer, and therefore was the direct result of the inducement held out in the first instance; that when once a confession under improper influence is obtained, the presumption arises that a subsequent confession of the same nature flows from the like influence, and this though the subsequent confession was made to a different person from the one holding out the inducement. R. v. HOPE YOUNG, 10 C. C. C. 466.

12. **Information Against Another Person.**]—The prisoner after his committal for trial, and while in the custody of a constable, made a statement, upon which the latter took him before a magistrate, when he laid an information on oath charging another person with having suggested the crime, and asked him to join in it, which he accordingly 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 that his statements as to the other might be given in evidence against himself, though he had been duly cautioned when under examination in his own case :—Held, following Regina v. Finkle, 15 C. R. 453, that both the information and deposition were properly received in evidence, as being statements voluntarily made, uninfluenced by any promises held out as an inducement to the prisoner to make them, and that too, though made under oath. REGINA v. FIELD, 16 C. P. 98.

The rule of law excluding the sworn statements of a prisoner under examination apply only to his examination on a charge against himself and not when the charge was against another; for in the latter case a prisoner is not obliged to say anything against himself, but if he volunteer such a statement, it will be admissible in evidence against him. Explanation of the principal on which the statement of a prisoner under oath is excluded. IB.

13. **Person in Authority** — EMPLOYER.] —A confession is inadmissible when made by an accused person to the effect that he had stolen money from his employer, where it was induced by the employer who had threatened him that if he did not, he (the employer) would call an officer. R. v. JACKSON, 2 C. C. C. 149.

14. **Person in Authority** — Rector's Investigation.]—A confession made to the rector of a church, in the presence of the choir-master, during an enquiry instituted by him as to an assault made by one choir boy on another whilst on the way to church, the choir boys being admonished by the rector to tell the truth, and that their statements were to be used for the purposes of that enquiry only, is inadmissible on the trial, as being made to a person in authority, and the Crown not having proven that the statement was voluntary. Rex v. Royds, 8 C. C. C. 209 10 B. C. R. 407.

15. **Persuading Prisoner to Confess.**]—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 any one prompted you to do 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 thereupon was improper. Regina v. Fennell 7 Q. B. D. 147, followed. Regina v. Romp, 17 O. R. 567.

16. **Questioning Prisoner**—Statements While in Custody.]—Answers given by a prisoner under arrest in response to the officer in charge, are receivable in evidence, if the presiding Judge is satisfied that they were not unduly or improperly obtained, which depends upon the circumstances of each case. Regina v. Elliott, 31 O. R. 567.

17. **Statements to Constable and Coroner**—Inducement.]—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 third day 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. Regina v. Finkle, 15 C. P. 453.

Semble, however, that the more reasonable rule to adopt in such cases 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 to 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 a favour thus held 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. Ib.

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 or not the prisoner had been induced by undue influence to confess. Ib.

Semble, 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.

18. **Statements to Detective.**]—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 showing 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. Regina v. Attwood, 20 O. R. 574.

19. **Statements to Detective.**] — 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, 20 O. R. 209.

20. **Statement Made to Person in Authority.**]—A rector of a cathedral held an inquiry into the circumstances of an assault in which several of the choir boys were implicated :—Held, that the rector was a person in authority, and that a statement made to him by one of the boys who was told to speak the truth, and that the statement was for the purpose of that inquiry only, was not voluntary. Rex v. Royds, 10 B. C. R. 407.

21. **Statements to those Arresting.**]—Held, that statements made by a prisoner to the parties who arrested him, he having been previously told on what charge he was arrested, were evidence. Regina v. Tufford, 8 C. P. 81.

22. **Value of such Evidence.**]—Remarks as to evidence of confessions, and an objection that the whole statement was not given. Regina v. Jones, 28 U. C. R. 416.

VI. Corroboration.

1. **Bawdy House**—Girl under Eighteen—Code Sec. 187-684.]—Defendant was convicted of knowingly suffering a girl under eighteen to be upon her premises for the purpose of prostitution under Code sec. 187. The evidence of the girl showed that she had given half her earnings to the defendant :—Held, that the evidence of another inmate tending to show the place to be a bawdy house was sufficient corroboration with sec. 684 of the Code. R. v. Brindley, 6 C. C. C. 196.

2. **Extradition.**]—In extradition proceedings the evidence of interested parties need not be corroborated. In re H. L. Lee, 5 O. R. 583.

3. **Forgery** — Witness Interested — Corroboration—R. S. C., ch. 174, sec. 218—Partnership.]—By sec. 218 of 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.

4. **Forgery**—Interest of Witnesses—R. S. C. Ch. 174, Sec. 218.]—The defendant was convicted of uttering, with knowledge that it was a forgery, the indorsement of the name "Taylor Brothers" upon a promissory note, which had been discounted by a bank, but given up and destroyed before maturity, upon security being furnished to the bank. The manager of the bank and the business partner of the defendant gave evidence of the forgery, and the three members of the firm of Taylor Brothers were also called as witnesses, and denied having indorsed the note, or having any knowledge of it:—Held, that the members of the firm of Taylor Brothers were not persons interested or supposed to be interested in respect of the indorsement, within the meaning of R. S. C. ch. 174, sec. 218, and their evidence therefore was sufficient to corroborate that of the other witnesses. Regina v. Selby, 16 O. R. 255.

5. **Forgery**—Uttering—Guilty Knowledge — Evidence — Admissibility.—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 uttering it knowing it to be forged. The prisoner was charged as an accessory before the fact. Evidence was admitted showing that two persons named F. and H. had been tried and convicted in Montreal of uttering similar forged circular notes printed from the same plate as those uttered by W.: that the prisoner was in Montreal with F., they having arrived and registered their names together at the same hotel, and occupied adjoining rooms: that after F. and H. had been convicted on one charge, they admitted their guilt on several others; and that a number of these circular notes were found on F. and H., which were produced at the trial of the prisoner. Before the evidence was tendered, it was proved that the prisoner was in company with W., who was proved to have uttered similar notes. Evidence was also admitted shewing that a large number of the notes were found concealed at a place near where the prisoner had been 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, 10 O. R. 557.

6. **Forgery**—CODE SEC. 684.]—It is not a corroboration in a material particular by witness implicating the accused, on a charge of forgery, that the witness who gave evidence as to the alleged forged signatures having been written by the accused, should also give evidence of certain other signatures written in a book identifying such latter signatures as also having been written by the accused. R. v. MCBRIDE, 2 C. C. C. 544. 26 O. R. 639.

7. **Indecent Assault**—EVIDENCE OF COMPLAINT—DELAY IN MAKING—CHILD OF TENDER YEARS—CODE SEC. 259.]—Evidence of a complaint having been made is not necessarily inadmissible because it was not made immediately after the commission of the offence; there is no fixed time within which such a complaint must be made; in some cases the delay of two days might be unreasonable, while in others a fortnight's delay might not be unreasonable; much depends on the special circumstances of each case. Where the evidence showed that the child was of such tender years that she had not a sufficient realization of the serious nature of the offence, and therefore was not affected by that indignation and sense of wrong which naturally would lead to making a complaint, a delay of ten days was held not to render inadmissible evidence of a complaint having been made. R. v. BARRON, 9 C. C. C. 196.

8. **Indecent Assault**—CODE SEC. 685.]—On a charge of an attempt to have unlawful carnal knowledge of a female under fourteen, the evidence of the child where received without being sworn, must be corroborated by some material evidence in support thereof implicating the accused and the degree of corroboration required by sec. 685 of the Code is greater than that required by sec. 25 of the Canada Evidence Act on a charge of an offence other than such comprised in said sec. 685 (e.g. common assault). R. v. DE WOLFE, 9 C. C. C. 38.

9. **Perjury**—CORROBORATION—LEAVE TO APPEAL.]—The fact that a magistrate rejects testimony tendered as corroborative on a charge of perjury does not of itself warrant the granting of a leave to appeal even if the Court of Appeal may think the magistrate was wrong in rejecting such evidence. REX v. BURNS, 4 C. C. C. 323. 1 O. L. R. 336.

10. **Seduction**—CODE SEC. 684.]—The defendant had been found guilty by a jury of having unlawfully seduced, and had illicit connection with a girl under sixteen, and over fourteen, under sec. 181 of the Criminal Code. The trial Judge was of the opinion that sufficient corroboration had been given, because of proof of pregnancy, and that in his opinion it had been "very clearly proven that it was hardly probable, and in fact next to impossible that any other man than the defendant was responsible for it." Evidence was adduced to shew that the girl was a domestic in the service of defendant, that her courses were regular before she went into his service, and after she returned home, her mother could not remember her having any. The physician testified in his opinion the pregnancy began subsequent to about the time she entered defendant's employ.:—Held, on a case reserved, that there was not sufficient corroborative evidence to satisfy Code sec. 684, and conviction was quashed. R. v. VAHEY, 2 C. C. C. 259.

VII. Deposition Evidence.
1 Coroner's Inquest.

1. **Coroner's Inquest.**]—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, 26 O. R. 678.

2. **Coroner's Inquest.**]—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 tha it was not intended to adduce the other evidence. Regina v. Hamilton, 16 C. P. 340.

The object of taking depositions is not to afford information to the prisoner, but to secure testimony. Ib.

3. **Coroner's Inquest.**]—The depositions of a witness taken at a coroner's inquest without objection by him that his answers may tend to criminate him, and who is subsequently charged with an offence, are receivable in evidence against him at the trial. Regina v. Hendershott, 26 O. R. 678, over-ruled. Regina v. Williams, 28 O. R. 583.

4. **Coroner's Inquest.**]—The coroner's court is a criminal court, section 5 of the Canada Evidence Act, 1893, 56 Vict. c. 31 (O.), which abolishes the privilege of not answering criminating questions, and provides that no evidence so given shall be receivable in evidence in subsequent criminal proceedings against the witness, other than evidence given by a person under oath though he may not have claimed privilege. Regina v. Williams, 28 O. R. 583, not followed. Regina v. Hammond, 29 O. R. 211.

5. **Declarations** — Prisoners — Depositions.]—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 had not boasted that he had shot M., was held to have been improperly rejected. Questions relating to collateral facts may be put to a witness for the purpose of discrediting his testimony and showing 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 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. Where a number of persons, against whom warrants 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 one 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 gestae. Evidence of one crime may be given to show 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 days before, it is doubtful if evidence of such riotous conduct is admissible, even for the purpose of showing the prisoner's knowledge that

he was liable to be arrested, and therefore had a motive to resist the officers. 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, 3 Pug. N. B. R. 546.

6. **Depositions at Coroner's Inquest** — USE OF AT TRIAL — IRREGULAR RETURN.] —The absence of a certificate that depositions taken at a coroner's inquest had been read over, renders the same imperfect, and they cannot be used as evidence, but if signed by witnesses may be used for testing memory of contradicting, and it is not material that they should be filed in the case and form part of the record. REX v. LAURIN, 5 C. C. C. 545.

7. **Deposition at Coroner's Inquest** — ADMISSIBILITY AS EVIDENCE AT TRIAL.]— Crim. Code sec. 687 does not apply to depositions taken before coroners, and they are not admissible as evidence at the trial, though they may be used in cross-examination. REX v. EDOUARD C. LAURIN, 5 C. C. C. 548.

8. **Former Deposition** — NOTES BY CORONER — NOT SIGNED BY WITNESS.]— A deposition not containing the witness' own expressions, but being merely notes of evidence taken by the coroner at an inquest and not signed by witness, and not appearing to have been read over to him, is not admissible in contradiction of the witness' testimony in a subsequent proceeding. In such case, however, the witness may be cross-examined as to any material statements made by him at the inquest and then witnesses may be examined for the purpose of showing a contradiction. REGINA v. CIARLO, 1 C. C. C. 157.

9. **Witness Absent from Canada** — DEPOSITION AT CORONER'S INQUEST — CODE SEC. 687]—A deposition to be admissible under sec. 687 of the Criminal Code, must be a verbatim record of the testimony of the witness; and have been read over to and signed by the witness and opportunity given the accused to cross-examine. A coroner is not a justice of the peace within sec. 687 of the Criminal Code. It is not sufficient evidence of the absence of a witness from Canada to render admissible a preliminary deposition, that the constable who endeavoured to serve such witness with a subpoena, testified to the effect that someone informed him that such witness had left Canada, without producing the party who had so informed the constable. R. v. GRAHAM, 2 C. C. C. 388.

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2. Foreign Commission.

1. **Preliminary Enquiry Pending** — RETURN — CODE SEC. 681-683.:—Under sec. 683 application for an order for a foreign commission may be made at any time or stage of inquiry at which evidence may be taken. The evidence taken on it may be received or used at any stage of the inquiry at which evidence may be given relating to the offence or the person accused of the offence. It is therefore competent to apply for a commission at, and the evidence taken is receivable on the preliminary hearing. The order should make it returnable to the court out of which it issued. REGINA v. VERRAL, 6 C. C. C. 327, 16 P. R. 444.

2. **Prosecution for Indictable Offence.**]— An order for a commission, under s. 683 of the Criminal Code, to take the evidence of any person residing out of Canada who is able to give material information relating to an indictable offence, or to any person accused thereof, may be made at any time after an information has been laid charging such offence, and such evidence may be used at any stage of the inquiry at which evidence may be given. Decision below 16 P. R. 444, affirmed, but the order issued thereon varied. REGINA v. VERRAL, 17 P. R. 61.

3. **Prosecution for Indictable Offence.**]— A prosecution for an indictable offence is "pending" within the meaning of s. 683 of the Criminal Code, 1892, when an information has been laid charging such an offence; and a commission to take evidence abroad for use before a magistrate upon a preliminary inquiry may then be ordered. But the discretion of the Judge in ordering the issue of a commission is to be exercised upon a sworn statement of what it is expected the witnesses can prove, and he must be satisfied as to the materiality of the evidence. And, under the circumstances of the case, a commission was granted to take the

evidence of only one of three witnesses whom the Crown proposed to examine, it appearing that the other two had not been asked to come into the jurisdiction, and that their evidence would be in corroboration only of a statement of the third witness that he was with the defendant upon a certain occasion. REGINA v. VERRAL, 16 P. R. 444.

4. **Witness Temporarily Within Canada** — CODE SEC. 683.]—Two witneses residents of the United States refused to remain in Canada to give evidence at trial on behalf of the prisoner; an application was made to examine them on Commission in Canada under sec. 683 of the Code. Held, that the order should be granted. R. v. BASKETT, 6 C. C. C. 61.

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3. Preliminary Inquiry.

1. **Absence of Deponent.**]— 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 depositions was in the discretion of the Judge at the trial, and that it could not be said that he had wrongly admitted it. REGINA v. NELSON, 1 O. R. 500.

2. **Absence of Witness.**]—In order to render the depositions of a witness taken at a preliminary enquiry admissible at the trial, it is not sufficient so show by letters and telegrams received, the latest being dated six days before the trial, that the witness is in the United States. REX v. TREFRY, 8 C. C. C. 297.

3. **Admissibility of Deposition of Deceased Witness taken at Preliminary Hearing** — CODE SEC. 590-687.]—The trial Judge reserved the question of the admissibility of two depositions of a witness at a preliminary hearing, and since deceased. The one was attached to some other depositions, but with no special caption or heading except this " Martha Louise Walker, sworn, saith," It was signed " Louise Walker " and " R. Campbell, P.M." There was nothing to show that deposition was taken on the same day as the attached ones, or that the charge was read to her, or that the prisoner was present. The magistrate was called at the trial and stated the date of the deposition; that the prisoner was present with counsel and cross-examined witness; and that it was signed in his presence and in the presence of the accused. There was nothing in the caption of the first deposition nor at the end of all the depositions to show that the one in question had any relation to the charge or to the other depositions. :—Held, the bare fact that it was attached to the other depositions was not sufficient to show that it related to the same charge or was taken in the same investigation; and the defect was not curable by the parol evidence of the magistrate :—Held, that the second deposition of the 30th of March, inasmuch as it stood alone and was not attached to any other paper, and was not taken on the specific charge on which the prisoner was committed, but on another charge of the same purport and in connection with the same unlawful purpose, was admissible under sec. 688 of the Criminal Code; that the mere fact of the witness signing herself " Louise Walker " when she was described as " Martha Louise Walker " did not vitiate the deposition, where it was sufficiently shown to be the same person; that the omission by the magistrate to add " J. P." after his signature, and the name of the county for which he was justice as in form S of the Code, did not render the deposition inadmissible, when the caption fulfilled the requirements of form S :—Held, also, that as the jury may have been influenced by the contents of the first deposition which was inadmissible, the conviction should be quashed and a new trial granted. R. v. HAMILTON, 2 C. C. C. 390, 31 N. S. R. 322.

4. **Admissibility of deposition of Witness taken on Preliminary Examination** — PROOF OF ABSENCE FROM CANADA.]— Upon a prosecution for wounding with intent to murder, the deposition of one C.,

taken before the police magistrate on the preliminary investigatoin, 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, 1 B. C. R., pt. II., 144.

5. **Contradiction of Witness' Testimony by Preliminary Deposition** — WHERE LOST — ADMISSIBILITY OF ORAL EVIDENCE — CODE SEC. 700.]—An oral examination of a witness reduced to writing in compliance with a statute, is not original or primary, so that it can be said there is nothing behind it, in such case the original and primary thing is what the witness said. The legal position, that while it exists and is accessible, the written deposition is the only admissible proof of its subject matter, does not necessarily involve the result that lost secondary evidence may be given of what it contained but not direct evidence of what was said by the witness whose oral evidence it purported to record. If the record is available it must be produced; failing that, oral evidence of what the witness said at the preliminary inquiry may be given. On an indictment for assault, evidence of alleged statements of a witness for prosecution at preliminary hearing as to what the accused said at the time of the assault is admissible as constituting part of the res gestae. R. v. TROOP, 2 C. C. C. 29, 30 N. S. R. 339.

6. **Deceased Witness** — STATEMENT.]—The statement of a deceased person, taken on oath by a magistrate, detailing the circumstances under which a felony was committed upon him, is admissible in evidence on the trial of the accused person under 1 Rev. Stat. c. 156, s. 7, though it is headed "The complaint," etc., instead of "The examination," etc., and does not appear on its face to have been taken in the presence of the accused, it being proved that it was taken in his presence. REGINA V. MILLAR, 5 All. N.B.R. 87.

7. **Depositions taken on a Preliminary Investigation before a Magistrate**—EVIDENCE.]—Depositions of a witness since dead taken on a preliminary investigation before a justice of the peace of a charge against a prisoner will be admissible, under sec. 687 of the Criminal Code, at his subsequent trial, if they purport to be signed by the Justice by or before whom they purport to have been taken, provided they were taken in the presence of the accused and that he or his counsel had a full opportunity of cross-examining the witness, notwithstanding that the signature of the witness was written with only one or two Christian names given in the caption, and that the Justice omitted to put the letters, "J.P." after his signature, as in the form S appended to the Criminal Code. On the preliminary investigation before a justice of the peace of a charge against the accused, the depositions of several witnesses were taken on 25th March, and committed to writing by the Justice under the heading "Canada, Province of Manitoba, Western Judicial District." "The depositions of Mathew Hamilton, of, etc., and others of .... taken on this 25th day of March, etc., at Brandon, etc., before the undersigned, one of Her Majesty's justices of the peace for the said Province, in the presence and hearing of Alexander Hamilton, who stands charged," etc. The first three pages of the record made contained the evidence of Matthew Hamilton and another witness, and concluded as follows : "Prisoner is remanded until Thursday, March 29th, at 10.30." with the date, 25th March, 1898, and the signature of the justice. On the 29th March following, Martha Louise Walker, since deceased, whose name did not appear previously in the record, appeared to have given her evidence, which the justice took down on twenty-two other sheets of paper, beginning simply, "Martha Louise Walker, sworn, saith," This was merely annexed to the first three sheets, and concluded with the signature of "Louise Walker" and "K. Campbell, P.M." Held, that the latter deposition could not be read under sec. 687 of the Criminal Code in evidence against the accused at his trial, as it did not purport to be a deposition taken by a justice of the peace on the charge against the accused, and therefore it could not be said to be signed by the justice by or before whom it purported to have been taken. Semble, if it had been proved that sec. 590 of the Code had been

complied with by reading over the deposition to the witness, and by the witness and magistrate signing in the presence of the accused, all three being present together, and in other respects the deposition might have been admissible in evidence independently of sec. 687 of the Code. Although the deposition held inadmissible was taken on a charge on which the accused was acquitted it contained very material testimony bearing on the charge on which he was convicted which might have influenced the jury, and the court ordered that the conviction should be set aside and a new trial granted. REGINA v. HAMILTON, 12 MAN. L. R. 354.

8. **Depositions at Preliminary Inquiry—** ABSENCE OF MAGISTRATE.]—Depositions taken at a preliminary inquiry, in the absence of the magistrate before whom the case is proceeding, have no legal value whatever; and therefore the commitment by the magistrate of a prisoner for trial, the bill of indictment founded on his illegal commitment or on the illegal depositions, and the true bill and indictment reported by the grand jury, are null and void. REX v. TRAYNOR, Q. R. 10 Q. B. 63.

9. **Depositions Taken at Preliminary Inquiry** — INCOMPLETE CROSS-EXAMINATION—WAIVER]—At a preliminary inquiry before a magistrate on a charge of indecent assault on a female, the latter's depositions were taken, the prisoner being represented by counsel, but before her cross-examination was concluded the proceedings were adjourned to a fixed date on account of her illness. Meanwhile, after consulting the county crown attorney, the magistrate determined to send the case to Sarnia, and so telegraphed to the prisoner's counsel, asking a reply whether he would come up or not. Counsel replied that if the magistrate intended to send the prisoner to trial at any rate, it would be no use his coming, and accordingly he did not further attend the proceedings. On the day on which the adjournment had been made, the magistrate went out to the residence of the witness, and obtained her signature to her depositions as already taken, neither the prisoner nor her counsel being present, and afterwards resumed the inquiry at his own office, the prisoner being present, but not the witness, and on the evidence already taken the prisoner was committed for trial. At the trial he witness was proved to be too ill to attend, and her depositions taken as above were tendered by the Crown and admitted:— Held, that, in view of s. 687 of the Criminal Code, the depositions were improperly received in evidence, the prisoner's counsel not ever having had a full opportunity of cross-examining the witness, and not having waived that right, as contended by the Crown. REX v. TREVANNE, 22 Occ. N. 385, 4 O.L.R. 475, I. O. W. R. 587.

10. **Deposition Taken at Preliminary Inquiry**—USE OF AT TRIAL—SUFFICIENCY OF EVIDENCE OF ABSENCE OF DEPONENT FROM CANADA.]—Evidence that witness at the preliminary enquiry was a corporal in the N.W.M. Police, that he had sworn in as a member of Strathcona's Horse, 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, if he had left the latter force he would have returned to such post, which fact would thereupon have become known to such deponent, was sufficient evidence of the absence of such witness from Canada to justify the admission as evidence at the trial of the deposition of such witness taken at the preliminary enquiry; and that the question was one to be decided by the trial Judge. REGINA v. FORSYTHE, 5 C. C. C. 398. 4 Terr. L. R. 398.

11. **In Preliminary Enquiry before a Justice.**]—Where a preliminary inquiry was suspended for the purpuse of including other offences, and also to add to the number of accused, and where upon the hearing of the new complaints, depositions not taken in the presence of the accused, were read over to the witnesses, and witnesses were asked upon oath to say whether such depositions were correct, and the accused were thereupon committed, it was held upon a motion to quash an indictment founded upon such committal that there could be no variation or evasion of the Criminal Code requiring that evidence shall be given in the presence of the accused, and the opportunity of hearing the words which a witness may have uttered out of the sight and hearing of the accused, is not the full right to which the accused is entitled. REGINA v. LEPINE 4 C. C. C. 145.

12. **Preliminary Deposition** — Cross-examination Interrupted by Sickness of Witness—Witness Signing Deposition in Absence of Accused—Code Sec. 590.]—Defendant was charged with having committed an indecent assault upon a female. The cross-examination of the girl had to be adjourned owing to the illness of the witness. Subsequently a magistrate secured the signature of the witness to the deposition, without accused or his counsel being present. The enquiry was later resumed, prisoner being present without counsel. On being asked if he had anything to say, replied, " Nothing." On the trial the deposition was tendered owing to the continued illness of the witness :—Held, that to introduce such a deposition in evidence under sec. 687 of the Code, three facts must be made to appear, (1) that the witness is too ill to travel ; (2) that the deposition was taken in the presence of the accused ; (3) that full opportunity was given counsel of cross-examination ; that full opportunity for cross-examination was not given, and the act of the magistrate in obtaining the signature of the witness to the incomplete deposition in the absence of the accused was irregular ; that there was no waiver to the right to cross-examination by the failure of prisoner's counsel to attend on the adjourned inquiry, or by prisoner stating thereon that he had nothing to say. Rex. v Trevane, 6 C. C. C. 125. 1 O. W. R. 587. 4 O. L. R. 475.

13. **Use of, Before Grand Jury.**]—Preliminary depositions can be read to the grand jury only in those cases where they would be admissible as evidence before a petit jury. R. v. Belanger, 6 C. C. C. 295. 12 Que. K. B. 69.

14. **Use of Depositions at Trial**—Absence of Witness—Proof.]—A material witness whose depositions had been taken at the preliminary enquiry was absent in New York, but it did not appear whether his absence was of a temporary or permanent character. The deposition was held inadmissible as evidence at the trial, as it was shown that his absence was of a permanent character. Rex v. McCullough, 8 C. C. C. 278.

15. **Witness**—Absence of — Preliminary Depositions — Admissibility of.] —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 s. 222, Criminal Proc. Act, and his deposition taken on the preliminary examination refused. 2. An adjournment of the trial to procure better evidence of the witness being out of Canada refused, as contrary to the spirit of the Speedy Trials Act. 3. 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.

16. **Witness Absent from Canada**—Preliminary Deposition.]—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 running between two American ports :—Held, that there was sufficient proof of absence from Canada. Regina v. Pescaro and Jim, 1 B. C. R., pt., 11, 144.

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4. Miscellaneous Cases.

1. **Committee of House of Commons.** —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 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. REG v. CONNOLLY, 22 O. R. 220.

2. **Consent.**]—Upon the hearing of a charge under the sections of the Code relating to the summary trial of indictable offences, evidence in other proceedings against another prisoner is admissible upon the consent of the accused's counsel. REGINA v. ST. CLAIR, 27 A. R. 308.

3. **Examination in Civil Action.**]—The examination of the defendant O. in a civil action arising out of the matters in question, he not having claimed privilege therein, was allowed to be used against him on his trial for criminal conspiracy. REGINA v. CONNOLLY, 25 O. R. 151.

4. **Extradition.**]—On a charge of forgery of a promissory note, alleged to have been committed in the State of Kansas, the justice before whom the depositions were made was certified to be a justice of the peace, with power to adminster oaths :—Held, that he was a magistrate or officer of a foreign state within S. 10 of the Extradition Act : and also that it was not necessary that he should be a federal and not a state officer ; and further that the depositions need not be taken in the presence of the accused. In re PARKER, 19 O. R. 612.

5. **Extradition.**]—Under 31 Vict. c. 94, the depositions must be those upon which the original warrant was granted in the United States, certified under the hand of the person issuing, and not depositions taken subsequently to the issue of the original warrant, and without any apparent connection therewith. REGINA v. ROBINSON, 5 P. R. 189.

6. **Original Depositions** — IMPERIAL ACT.]—Held, that original depositions are admissible in proceedings under the Imperial Act 6 & 7 Vict. c. 34, and can be used in evidence against a prisoner upon proof of their identity and of their being properly taken, which in this case, upon the evidence set out, was held to be clearly shewn. REGINA v. MATTHEW, 7 P. R. 199.

Held, also, that they may be clearly proved by the viva voce evidence of a witness competent to swear to the facts ; that copies of the depositions can be proved by such testimony as well as by the certificate prescribed by the Act ; and that a certificate identifying the copies of the original documents may be supplemented by viva voce evidence that the originals referred to in the certificate were the originals upon which the warrant issued. IB.

7. **Perjury in Civil Action** — DEPOSITIONS — INDICTMENT — FORM.]—A person charged with perjury committed in a civil action is entitled to have in evidence those parts of his testimony in the civil action which may be explanatory of the statements in respect of which the perjury is charged. Where the indictment did not follow the statutory form and laid the charge in an involved manner, but contained the essential averments, it was held sufficient, the unnecessary matter being considered surplusage. REX. v. COOTE, 24 Occ. N. 257, 10 B. C. R. 291.

VIII. DOCUMENTS.

1. **Comparison of Authentic with Disputed Document.**]—Upon a charge of writing a threatening letter with intent to extort, the Judge was justified, when he charged the jury, after all the evidence was in, in allowing the jury to compare an admitted writing with that which was disputed, in order to draw their own conclusions from a comparison of the two. REGINA v. DIXON, 3 C. C. C. 220, 29 N. S. R. 462.

2. **Extortion** — LETTER WRITTEN TO FACILITATE PAYMENT — ADMISSIBILITY.]—A letter written by the person who was served with a summons to his mother stating the facts and what would happen if certain monies were not paid, is not evidence against the accused being merely hearsay. REX v. CORNELL, 8 C. C. C. 416, (N.W.T.)

3. **Of Elector Respecting His Vote is Primary.**]—In an election under the Dominion Elections Act, neither the ballot paper nor any other document or paper would show how an elector had voted

There is no other mode of ascertaining the fact than the evidence of the voter himself. Such evidence is primary. REGINA v. SAUNDERS, 3 C. C. C. 278, 11 Man. L. R. 559.

4. **Oral Evidence Connecting Advertisement with Goods Sold.**]—On a charge of applying a false trade description to silver plated ware advertised for sale as quadruple plate, it was held that oral evidence was admissible to show that the description contained in the advertisement applied to the goods sold. REGINA v. T. EATON CO., LTD., 3 C. C. C. 421, 20 Occ. N. 3, 31 O. R. 276.

5. **Orders in Council.**]—Held, that a magistrate cannot take judicial notice of orders in council, or their publication, without proof thereof by production of the official Gazette, and therefore, that a conviction was bad, which was made without such evidence that the Canada Temperance Act of 1878 was in force in the country, pursuant to the terms of s. 96 thereof. REGINA v. BENNETT, 1 O. R. 445.

6. **Proof of Service of Document.**]—The laws of proof of service of a document in civil proceedings in a province are sufficient to prove similar service in a criminal proceeding. REX v. RAPAY, 7 C. C. C. 170, 5 Terr. L. R. 367.

7. **Proof of by Certified Copy.**]—The by-laws of the Montreal Harbour Commissioners can be proved by a true copy of them certified under the hand and seal of the secretary. PERRAULT v. MONTREAL HARBOUR COMMISSIONERS, 4 C. C. C. 501. Q. R. 17, S. C. 501.

8. **Subsequent Proof of Document Improperly Admitted.**]—Documentary evidence admitted upon insufficient proof need not be rendered again in evidence where all doubt of its admissibility is subsequently removed. REGINA v. DIXON 3 C. C. C. 220, 29 N. S. R. 462.

IX. DYING DECLARATIONS.

1. **Admissibility of.**]—An Indian woman's statement that she thinks she is going to die as a sufficient indication of such a settled, hopeless expectation of immediate death as to render the statement admissible as a dying declaration. Before the death of an Indian woman, for whose murder the prisoner was being tried, a statement was obtained from her in the following way: A justice of the peace swore an Indian to interpret the statement the woman was about to make; a constable then asked questions through the interpreter, and a doctor wrote down what the interpreter said the woman's answers were. The doctor and the justice of the peace then signed the statement. To some of the questions the woman indicated her answer by nodding her head. At the trial the statement was tendered as a dying declaration, and the doctor, the justice of the peace and the constable identified the statement; the interpreter deposed that he interpreted truly, but he gave no evidence as to what the woman really did say:—Held, disapproving Rex v. Mitchell (1892), 17 Cox, C. C. 503, that the statement was admissible as a dying declaration; also that it had been properly proved. A dying declaration may be obtained by means of questions and answers, and if it is reduced to writing it is sufficient if the answer only appear in the writing:—Held, per Martin, J., Nodding was a sufficient answer where witness warned to talk as little as possible. REX v. LOUIE, 10 B. C. R. 1.

2. **Admissibility.**]—The declarant must be thoroughly convinced that he is about to die, he must have no hope or glimmer of hope; it is not merely a matter of thinking, but must be one of solemn conviction. It is under these circumstances alone that the law allows dying declarations to be admitted in evidence. The time at which the death afterwards occurs is immaterial, provided it occurs with certain proximity, and is the result of the crime committed; to be admissible death must ensue. R. v. LAURIN, (No. 4) 6 C. C. C. 104.

3. **Admissibility — CODE SEC. 746.**]—Under Code sec. 746 the improper admission of evidence at a criminal trial cannot be said in itself necessary to constitute a wrong, or miscarriage, but it is a question for the court, upon hearing of any appeal, whether in the particular case it did so or not. If the deceased was at the time of making the declaration in such a condition that he believed (1) that his death was imminent and impend-

ing (2) that he was in danger of dying in a short time without hope of recovery, the declaration is admissible, and whether such was the case is a question entirely for the trial Judge to decide. R. v. Woods, 5 B. C. R. 585, 2 C. C. C. 159.

See also Depositions.

4. **Admissibility** — Res Gestae.] — A dying declaration is admissible only as to the transaction itself from which the death ensued; distinct and separate transactions which occurred before and after the commission of the acts are not pertinent or relevant and cannot be proved by the dying declaration. Rex v. Laurin, (No. 1) 5 C. C. C. 324.

5. **Impending Sense of Death.**]—On a charge of murder a declaration by the deceased that he was 'going fast' and that the prisoner shot him, and asking that a priest be sent for, though subsequently he requested the presence of a doctor is admissible as a dying declaration, being evidence of an impending sense of death. Regina v. Davidson, 1 C. C. C. 351, 30 N. S. R. 349.

X. Examination of Witnesses.

1. **Contradicting Own Witness** — Code Sec. 699.]—A party is not debarred by Code sec. 699 from producing other witnesses, (not for the express purpose of contradicting a previous witness)but whose testimony indirectly contradicts such previous witness by establishing the truth by such other distinct and independent evidence. Though one's own witness may not be directly contradicted or discreidted, under sec. 699 unless in the opinion of the court he proves hostile, yet he may be indirectly contradicted, since there is no law to prevent the truth being shewn and made known to the court. R. v. Laurin, 6 C. C. C. 135.

2. **Cross-Examination.**] —A co-defendant on a joint indictment has the right to cross-examine on the evidence adduced on behalf of any of the other defendants, before the counsel for the prosecution cross-examines, and in doing so to bring out fresh facts which my be advantageous for his defence. Rex v. Barsalon, 4 C. C. C. 446.

3. **Examination of Witness** — Refreshing Memory by Deposition.]—Where a witness who is not hostile gives an answer different from his evidence as taken down in a previous deposition, the deposition may be shown to the witness to refresh his memory, but it cannot be read aloud to the court. If the witness still persists after refreshing his memory the question may be then repeated from the deposition in a leading form. The opposite party has then the right to cross-examine on the deposition as well as on the answer to the court. R. v. Laurin, 6 C. C. C. 135.

4. **Re-Examination on, Inadmissible** — Voluntary Statement by Witness in Course of Cross-Examination.] — The right to re-examine follows upon the exercise of the right to cross-examine, and even if inadmissible matters are introduced in cross-examinntion, the right to re-examine remains, and the rule holds good where the witness volunteers the statement. If the Crown desires to avoid re-examination on the inadmissible evidence it should be expunged at the instance of the Crown. Rex v. Noel, 7 C. C. C. 309, 6 Ont. L. R. 385.

5. **Right to Re-Examine Witness.**]—The right to re-examine follows upon the exercise of the right to cross-examine, and, even if inadmissible matter be introduced in cross-examination, the right to re-examine remains, and the rule holds good where the witness volunteers the statement. If it be desired to avoid re-examinntion upon such matter, it must be expunged at the instance of the party cross-examining; while it remains as part of the testimony, the right to re-examine upon it also remains. Ruling of Meredith, C. J., at the trial, reversed, and a new trial ordered. Rex v. Noel, 23 Occ. N. 293, 6 O. L. R. 385, 2 O. W. R. 488, 776.

6. **Riot** — Evidence Before Grand Jury — Conversations — Previous Conduct — Cross-Examination — Previous Statements — Contradiction.]—On the trial of an indictment for riot, evidence or 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 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-examination 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 the grand jury, though he may show that a witness gave different evidence before the grand jury from that which he had given on the trial. On the trial of an indictment for riot and unlawful assembly on the 15th January, evidence was given on the part of the prosecution of the conduct of the prisoners on the day previous, for the purpose of showing (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 thereupon claimed the right to show that they 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 fourteenth could not qualify or explain their conduct on the following day. REGINA v. MAILLOUX, 3 Peg. 493, N. B. R.

XI. EXTRADITION CASES.

1. **Extradition** — INFORMATION ALLEGING THAT PRISONER IS AC USED, ETC. — SURPLUSAGE — 32 & 33 VIC., CH. 30, SEC. 11, D., CH. 29, SEC. 27, D. — PLEA TO INFORMATIONS, NECESSITY FOR — DEPOSITIONS — SUFFICIENCY OF PROOF OF — CORROBORATION.]—In extradition proceedings the information charged that the informant " hath just cause to suspect and believe, and doth suspect and believe that H. L. Lee," the prisoner, " is accused of the crime of forgery," etc., " for that the said H. L. Lee, etc., " did feloniously forge " some 78 orders for the payment of money. The 79th charge was, that the said H.L. Lee, at the aforesaid several times, etc., did feloniously utter, knowing the same to be forged, the said several orders, etc. :—Held, sufficient, for that the information charged that the prisoner " did feloniously forge," etc.; and the allegation that the informant believed that the prisoner " is accused," etc., might be treated as surplusage : but even if objectionable at common law, it was good under sec. 11 of 32 & 33 Vic., ch. 29, sec. 27, D.; and moreover the 79th charge was free from objection :—Held, also, that in these proceedings, a plea to the information is not required. Certain foreign depositions used were sworn to before E. G., a justice of the peace for Cincinnati township, Hamilton county, Ohio. A certificate was attached, commencing, " I, Daniel J. Dalton, clerk of the Court of Common Pleas for said Hamilton County," certifying as to the signature of E. G., and that he was a duly qualified justice of the peace for said county, and entitled to take depositions of witnesses, etc.; and concluded, " In testimony whereof I have hereunto set my hand and affixed the seal of the said Court at Cincinnati," etc., D. J. Dalton by Richard C. Rohner, Deputy. To this was attached the certificate of the Governor of the State of Ohio,under the great seal of the state, certifying that D. J. Dalton, " whose genuine signature and seal are affixed to the annexed attestation, was at the date thereof clerk of the said court," etc.; that " he is the proper person to make such attestation, which is in due form, and that his official acts are entitled to full faith and credit." The court, without specially pronouncing on the question refused to allow an objection which as a matter of fact was not taken, to the sufficiency of the depositions under 45 Vic., ch. 25, sec. 9, sub-sec. (2) a D., for the official seal of D. J. Dalton, is attached. and the Governor certified that he was the proper person to make such attestation; and also there was viva voce evidence given in proof thereof, so that the " papers were authenticated by the oath of some witness " under sub-sec. (b). Per Wilson, C. J.—In these proceedings, the evidence of interested parties need not be corroborated. IN RE H. L. LEE, 5 O. R. 583.

2. **Extradition Crime** — ASHBURTON TREATY — EVIDENCE NECESSARY.]—The Ashburton treaty provides in order to obtain the extradition of a fugitive criminal it is necessary to make the same evidence with respect to the accusation brought against him as would be necessary in the country from which his ex-

tradition should be demanded, to justify his committal for trial if the crime had been committed there, and Article 7 of the Convention between Great Britain and the United States ratified March 11th, 1890, provides in case of a fugitive criminal alleged to have been convicted of a crime for which his surrender is asked, a copy of the record, duly authenticated should be produced and evidence made to prove that the prisoner is the person who was so convicted. Evidence tending to show the offence is political or that it is not an extraditable crime should be admitted. In the Matter of Louis Levi, 1 C. C. C. 74, R. J. Q. 6, Q. B. 151.

3. **Indictment Not Admissible as on Extradition Proceedings.**]—An indictment is not admissible as evidence to warrant commitment for surrender in extradition proceedings as such indictment does not amount to more than hearsay evidence. Ex Parte Feinberg, 4 C. C. C. 270.

4. **Several Theories.**]—If the evidence present several views, on any one of which there may be a conviction, if adopted by the jury, the court will direct extradition. Regina v. Gould, 20 C. P. 154.

5. Where an application for extradition is founded upon deposition evidence it will be required to strictly conform to the conditions perscribed by the Act for such evidence, and nothing will be inferred in its favour. The warrant of the magistrate in the foreign jurisdiction was dated before the date of the swearing of the deposition. The evidence consisted in part of admissions stated to have been made by the accused, but there was nothing to shew that the admission was not procured by an inducement to the prisoner to make a statement :—Held, the evidence was insufficient upon which to extradite the accused. In re Ockerman, 6 B. C. R. 143.

See also Extradition.

XII. Improper Admission or Rejection Of.

1. **Admissibility**—Conspiracy to Defraud—Judge's Opinion of Evidence—Misdirection.]—1. On a charge of conspiracy to defraud the C.P.R. Co. by disclosing secret information as to the time and place of auditing passenger trains, evidence was properly rejected which was tendered by the defence for the purposes of showing that the information given out could be passed out by one conductor to another for purposes other than for defrauding the company, such proof is altogether hypothetic. 2. The trial Judge may give his own appreciation of the evidence to the jury which may or may not be accepted by them. The essential point is that the whole evidence be submitted to the jury who must finally decide as to the guilt of the accused. R. v. Carlin, 6 C. C. C. 507, 2 R. 12 K. B. 483.

2. **Evidence in Foreign Language** — Counsel Conversant with Language.]—On a trial for murder, the evidence of witnesses was given in the French language which the prisoner, an Englishman, did not understand, but the prisoner was represented by counsel whose habitual tongue was French. It was held there was no miscarriage occasioned thereby as the prisoner was represented through his counsel. Rex v. William Long, 5 C. C. C. 493, 2 R. 11, K. B. 328.

3. **Failure of Accused to Object to Admissibility**—Duty of Judge.]—It is the function of the Judge who presides at the trial of a criminal case to conduct and regulate the proceedings to see that only legal evidence is given, and to explain the law to the jury. The Judge should of his own motion preclude any illegal evidence which the parties may endeavour to lay before the jury. If a mistake has been made by counsel in omitting to object to illegal evidence, that does not relieve the Judge from the duty to see that proper evidence only is before the jury. Illegal evidence of a nature to prejudice the minds of the jurors having been admitted though counsel failed to object, a new trial was ordered. Rex v. William Long, 5 C. C. C. 493, 2 R. 11, K. B. 328.

4. **Forgery** — Uttering Forged Promissory Notes—Signature of One Person Represented to be that of Another—Amendment of Charge under Speedy Trials Act.]—Improper Admission of Evidence—The prisoner, Morton Ricker, obtained his discharge from arrest by giving to his creditor, who had agreed to accept the joint notes of himself and his son Manly, two notes signed " Morton Ricker " and " Wilfred " or " Witfield M.

Ricker," representing that Manley's name was Wilfred Manly, and that he always signed as "Wilfred M." The notes were not in fact signed by Manly, but were signed by the prisoner, who had authority from another son, who was called both Witfield and Wilfred Morton, to sign his name :—Held, that a conviction of the prisoner for uttering the notes, knowing them to be forged, was proper. An amendment of the charge under the Speedy Trials Act, by inserting the words "or Witfield" after the word "Wilfred," was properly allowed. The improper admission in evidence of a notice published in a newspaper, purporting to have been signed by the prisoner, is not a ground for quashing the conviction, where there is other ample and uncontradicted evidence of the facts sought to be proved by the notice. REGINA v. RICKER, 31 N. B. R. 184.

5. **Opinion Evidence** — IMPROPERLY RECEIVED.]—Where the trial Judge, without a jury, found that the transactions in a bucket shop were merely bets on the rise and fall of the market—gambling transactions pure and simple—and there was evidence to support that finding, the fact that opinion evidence regarding the supposed legality or illegality of the transactions was improperly received, will not be considered a substantial wrong or miscarriage, where there was no jury and there was sufficient evidence irrespective of the opinion evidence. R. v. HARKNESS (No. 2) 10 C. C. C. 199, 10 O. L. R. 555.

6. **Perjury** — INDICTMENT — DESCRIPTION OF OFFENCE — IMPROPER ADMISSION OF CRIMINATING ANSWERS BEFORE A JUDICIAL TRIBUNAL—CORONER. —A count alleging perjury before a coroner—omitting any reference to the coroner's jury—was held sufficient in view of s. 611, s.-s. 3 and 4, and s. 723, of the Criminal Code. A new trial was granted on the ground of the reception of evidence of an admission made by the accused in answer to questions put to him as a witness on the inquest before the coroner's jury, it being held that s. 5 of the Canada Evidence Act, 1893, compelled the witness to answer, and protected him against his answers being used in evidence against him in any criminal proceeding thereafter instituted against him other than a prosecution for perjury, in giving such evidence, and this without without the necessity for the claim of privilege on the part of the witness. (But see now 61 V. C. 53, s. 1.). REGINA v. THOMPSON, 2 TERR. L. R. 383.

7. **Rejection of** — SUBSTANTIAL WRONG —CODE SEC. 746.]—Where on a charge of aiding and abetting a rape, the trial Judge refused to compel a Crown witness to answer a question tending to show that he had had connection with prosecutrix, though the ruling was improper, yet where there was sufficient independent corroborative evidence to support the conviction, it was held to be a case for the application of Code sec. 746 (f), there being no substantial wrong done the prisoner. R. v. FINNESSEY, 10 C. C. C. 347.

8. **To Reduce Charge of Murder to Manslaughter.**]—New trial granted where evidence, which was proper to be considered for the purpose of determining whether the prisoner's offence should be reduced from murder to manslaughter, was withdrawn from the jury. REGINA v. BRENNAN, 4 C. C. C. 41, 27 O. R. 659.

9. **Unlawful Assembly**—CONVICTION.]—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 the case, and there was ample evidence to sustain the conviction. REGINA v. MAILLOUX, 3 PUG. N. B. R. 493.

10. **Whether Miscarriage Thereby** — CODE, s. 746.]—Under s. 746 of the Code, the improper admission of evidence at a criminal trial cannot be said in itself necessarily to constitute a wrong or miscarriage, but it is a question for the Court upon the hearing of any appeal, whether in the particular case it did so or not. Makin v. A. G. for N. S. W. (1894), A. C. 57, distinguished. REG. v. WOODS, 5 B. C. R. 585.

See also New Trial.

XIII. ONUS OF PROOF.

1. **Attempt to Steal** — PROOF OF THEFT —CRIM. CODE 712.]—Where the indictment is merely for an attempt to steal, and the proof establishes the commission

of the full offence of theft, the jury may convict of the attempt unless the court discharges the jury and directs that the prisoner be indicted for the complete offence. REGINA v. TAYLOR, 5 C. C. C. 89.

2. **Burden of Proof in Prosecution under Manitoba Liquor License Act.**]—In a prosecution under the Manitoba Liquor License Act, it is incumbent upon an accused setting up the defence, that the liquor was sold by him as a duly registered druggist to prove that he was registered as such under the Act relating to the Pharmaceutical Association of Manitoba. The evidence of the accused that he was a druggist "duly registered" is insufficient. The registration must be proved either by a certified copy of the entry in the register or by a certificate of the register in certain cases. REGINA v. HERRELL, 3 C. C. C. 15, 12 MAN. L. R. 522.

3. **Corpus Delicti** — MURDER — IDENTITY OF REMAINS—FAILURE OF ACCUSED TO TESTIFY—COMMENT BY CROWN COUNSEL.]—1. Where once the fact of death is established circumstantial evidence can then be given to prove the identity of the remains, and also the identity of the person who caused the death. 2. Crown counsel has the right of reply, even though no evidence is called by the accused. 3. Comment by the crown counsel on the failure of the accused to testify as follows, "I think his counsel took the very best and wisest course in not having him go on the stand, and I think it is wise for himself" is a contravention of the Canada Evidence Act, and amounts to a substantial wrong for which a new trial will be ordered. R. v. KING, 9 C. C. C. 426. 1 W. L. R. 348, 576.

4. **False Pretences**—MODE OF PROOF WHERE CREDIT IS OBTAINED FROM BANK ON MISLEADING STATEMENT.]—Where a false statement is presented to a bank for the purpose of inducing the bank to give discount or credit, it is not necessary to examine one, or more, of the directors, if it was possible to prove the false pretence, and that the direction relied upon it, by the evidence of other competent witnesses; and proof of circumstances subsequent to the submission of the false statement is admissible to establish the financial position of the accused, and their knowledge of such position at the time the false pretence was made. REGINA v. BOYD, 4 C. C. C. 219.

5. **Liquor** — PROOF OF CONSUMPTION CONCLUSIVE OF SALE.]—Under sec. 53 of the Ontario Liquor License Act, proof of consumption of liquor on the premises of the club, is made conclusive evidence of the sale of liquor. REX. v. LIGHTBURNE 4 C. C. C. 358, 21 OCC. N. 241.

6. **Manslaughter** — POSSIBLE CAUSES OF DEATH—SUFFICIENCY OF EVIDENCE AS TO CRIMINAL OPERATION.]—Evidence, in a trial for murder by committing an abortion, tending to show that death resulted from the medicines and abortion committed by the prisoners is sufficient in point of law to go to the jury through the post-mortem examination was insufficient, and though it is consistent therewith that death might have been occasioned by some undiscovered disease of organs as to which no examination was made. REGINA v. GARROW AND CREECH, 1 C. C. C. 246, 5 B. C. R. 61.

7. **Onus of Proof** — FALSELY APPLYING TRADE MARK—CRIM. CODE SEC. 447.]—On a charge of falsely applying a trade mark (Crim. Code sec. 447) the onus of proof that the assent of the proprietor of the trade mark has not been given is on the prosecution, and sec. 710 of the Criminal Code does not apply. REGINA v. SAMUEL HOWARTH, 1 C. C. C. 243.

8. **Penal Statute**—RULES OF EVIDENCE OF CRIMINAL LAW—APPLICABILITY.]—The rule of evidence of criminal law with respect to the sufficiency of allegations, apply to proceedings under a provincial statute of a penal nature. In order to convict, the evidence must exclude a rational probability of innocence. BRYCE v. WILKS, 5 C. C. C. 445, Q.R. 11, K. B. 464.

9. **Proof of Alibi** — MISDIRECTION.]—Where the defence to a criminal charge is an alibi, it is misdirection to tell the jury that the onus is on the prisoner to prove it to their entire satisfaction, and to shew beyond all question or reason that he could not have been present at the commission of the crime. REX v. MARSHALL, 35 N. B. REPS. 507.

10. **Receiving Stolen Property**—PROOF OF PRESUMPTION.]—On an indictment for receiving stolen goods, it is not necessary to prove by positive evidence that the property found

in the possession of the prisoner belongs to the prosecutor; it is sufficient if the evidence is such that a jury may reasonably presume the identity of the property. REGINA v. GILLIS, 29 N. B. R. 30.

11. **Statutory Presumption**—REBUTTAL—LIQUOR LICENSE LAW.]—The Liquor License Law (R. S. N. S. c. 100, s. 111) casts upon the "occupant" of premises the burden of proving that the sale did not take place without his consent. It was held, though an express denial be made by the accused of any authority or direction for the sale, the magistrate may regard all the facts of the case and refuse to believe the denial. REX v. ANDREW CONROD, 5 C. C. C. 414, 35 N. S. R. 79.

12. **Statute Creating Offence**—PROVISO OR EXCEPTION—ONUS OF PROOF.]—If an exception occurs in the description of an offence in the statute the exception must be negatived by the prosecution as the exception would be part of the description of the offence, but if the exception comes by way of proviso, and does not alter the offence, but merely states what persons are to take advantage of it the defence must plead and prove that the accused came within it if such be the fact. REGINA v. STRAUSS, 1 C. C. C. 103, 5 B. C. R. 486.

XIV. PRISONER.

1. **Comment on Failure of Accused to Testify.**]—Where the Crown prosecutor during the address of counsel for the defence to the jury interjects a remark in a conversational tone, such interjection cannot be taken as a comment upon the failure of the accused to testify, where such interjection is in relation to a fact material to the issue. The interjection, may be improper, but unless a substantial wrong or miscarriage is occasioned by it it is not a matter for which the verdict can be set aside or a new trial ordered. REGINA v. WEIR, 3 C. C. C. 262.

2. **Possession of Stolen Goods**—CROWN CASE RESERVED.]—A Crown case was reserved to determine the question whether when stolen goods are found in the possession of a prisoner, and he gives to those who find him a reasonable account of how he came by the goods, it is incumbent upon the prosecution at the trial to shew that the prisoner's account is untrue:—Held, that, in the absence of any evidence to shew that such account was in fact given, the Court was not in a position to determine the question reserved. REGINA v. MCKAY, 34 N. S. REPS. 540.

3. **Prisoner as Witness at a Previous Trial Admissible upon Consent of Counsel.**—The distinction between misdemeanour and felony having been abolished by the Code, which provides that all proceedings in indictable offences shall be conducted in the same manner, it was held that on a summary trial for robbery, the prisoner's evidence as a witness, on the trial of another person was properly admitted as evidence for and against the prisoner, where prisoner's counsel consented to such evidence going in. REX. v. FOX, 7 C. C. C. 457.

See also JUDGE'S CHARGE—HABEAS CORPUS—NEW TRIAL—PRISONER.

XV. RELEVANCY.

1. **Abduction** — CRIM. CODE 283 — PERSUASION BY LETTERS RECEIVED IN FOREIGN COUNTRY.]—On a charge of abduction under sec. 283 of the Criminal Code letters received in the United States by a girl in the United States from the prisoner persuading her to come to him to Canada, such inducement constituting part of the offence, are not evidence against the prisoner, as the act of persuasion took effect beyond the jurisdiction of the court. REGINA v. BLYTHE, 1 C. C. C. 263, 4 B. C. R. 276.

2. **Abortion** — SEDUCTION — EXTORTION BY THREATS.]—Prisoner had gone to doctor's office and according to the case for the Crown, charged the doctor both with procuring an abortion on, and with seduction of his wife, and demanded $5,000, in default of payment of which, he threatened exposure. On the trial the defence endeavoured to show that the demand was made in respect of the seduction charge only:—Held, that the evidence was inadmissible following R. v. Gardiner (1824), 1 C. & P. 479 and R. v. Cracknell, 10 Cox C. C. 408. R. v. WILSON, 6 C. C. C. 131.

3. **Acts Admissible to Show False Bank Returns.**]—Under a general charge of a bank return being false and deceptive, it is legal to show the inexactitude and falsity of the amounts entered upon all of the headings or only of some of them, and evidence of acts falsely representing the financial position of a bank is admissible to establish the falsity and deceptive nature of a return. REGINA v. WEIR, 3 C. C. C. 262.

4. **Attempt to Murder Child** — CRUELTY TO ANOTHER CHILD.]—On a charge of causing grievous bodily harm with intent to murder the child of the accused, it is not admissible to establish cruelty to another child of the accused such being irrelevant to the issues. REGINA v. LAPIERRE, 1 C. C. C. 413.

5. **Common Design** — ACTS OF OTHERS.] —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, the prisoner being charged with being in arms in Upper Canada with intent to levy war against the Queen, evidence was admitted against the prisoner of an engagement between the body of men with whom he had been and the Canadian volunteers, 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 the prisoner was with them before his arrest. REGINA v. SLAVIN, 17 C. P. 205.

6. **Conspiracy** — WRITINGS OR WORDS OF ONE PARTY.]—Writings or words of one party charged with conspiracy where such implicate others, can be considered in the nature of an act done in furtherance of the common design, and are admissible in evidence not only against the party himself, but as proof of an act from which inter alia the jury may infer the conspiracy itself. REGINA v. CONNOLLY AND MCGREEVY, 1 C. C. C. 468, 25 O. R. 151.

7. **Conspiracy** — HYPOTHETICAL TESTIMONY — FRAUD.]—On a trial for conspiracy to defraud a railway company by fraudulently obtaining information of the secret audits about to be made and furnishing same to conductors of cars to enable them to be prepared for the audits, proof that information of this nature might be given by one conductor to another for purposes other than to defraud the company, was properly excluded, because such evidence would be merely hypothetical, and could not disprove the object of the conspiracy, or throw any doubt on the evidence which had been adduced to shew the object which the parties had in view. Judgment in which Q. R. 12, K. B. 368 affirmed. REX v. CARLIN, Q. R. 12, K. B. 483.

8. **Conspiracy** — PREVIOUS ACTS OF ACCUSED —]—The accused were charged with having conspired to fraudulently obtain from the Merchants Bank of Halifax various sums of money by certain false pretences. The Crown called as witness the manager of another bank to prove that at the same period the accused obtained another sums from that bank in the same manner. Counsel for the accused objected to the admission of this evidence as being irrelevant, and as tending to prejudice the minds of the jurors by proving the prisoners to have committed a crime other than that with which they were then charged :—Held, that acts similar to those charged, but committed against other persons, might be proved in order to shew that at the time of the commission of the offence charged the accused knew that they were acting unlawfully. REGINA v. MCCULLOUGH AND MCGILLIS, 21 Occ. N. 306.

9. **Conspiracy** — RAILWAY COMPANY SECRET AUDIT SCHEME — DISCLOSURE OF — AFFIDAVIT OF JUROR AS TO IRREGULARITY OF VERDICT — INADMISSIBILITY OF.]—The accused was convicted of having conspired to defraud the C. P. R. Co. by bribing clerks for information as to time of making secret audits, and the trains on which such would be made, and to furnish such information to the conductors to enable them to be prepared and at other times left free to retain fares. On motion for a reserve case :—Held, 1. That evidence tending to prove that the information could be given by one conductor to another of the auditing of his train for a purpose other than that of aiding him to defraud the company was inadmissible as not tending in any way to disprove the object of the conspiracy and was therefore irrelevant. 2. That a remark of the Judge to the jury

to the effect that "about forty or fifty witnesses have been examined for the purpose of establishing the good character of the accused. It is very strange that it should take forty or fifty witnesses to establish it," is but a matter of irregularity for which a verdict might not be impeached. The trial Judge has a right to give his opinion of the evidence to the jury and the remark in question was a proper one. R. v. CARLIN, 6 C. C. C. 365, Q. R. 12, K. B. 483.

10. **Coroner's Inquest** — DISCREDITING WITNESS.]—At a coroner's inquest evidence is properly receivable under R. S. C. c. 174, s. 234, that a witness at such inquest has made at other times a statement inconsistent with his present testimony; and independently of that enactment the improper reception of evidence is no ground for a certiorari to bring up the coroner's inquisition. Regina v. Ingham, 5 B. & S., at p. 260, specially referred to. REGINA V. SANDERSON, 15 O. R. 106.

11. **Guilty Knowledge upon Indictment Charging Possession of Counterfeit Money**]—Upon an indictment charging possession of a counterfeit coin, an objection to the Crown introducing evidence of the prisoner having genuine trade dollars on his person when arrested, and which he had tried to pass off as worth one dollar, when the real value was sixty cents, was sustained on the ground that guilty knowledge would have to be established by proving that the trade dollar was counterfeit. REGINA V. BENHAM, 4 C. C. C. 63, Q. R. 8, Q. B. 448.

12. **Implicating Accused** — CODE SEC. 181.]—Evidence of prisoner's statement that he 'got there' with prosecutrix, though made after girl reached the age of sixteen, is evidence implicating accused. Also evidence shewing that prisoner had stated before being charged with any offence, that if he could get the girl away and marry her he would escape 'punishment'. REGINA V. WYSE, 1 C. C. C. 6, 2 Ter. L. R. 103.

13. **Indecent Assault** — PARTICULARS OF COMPLAINT — ADMISSIBILITY IN CIVIL ACTION.]—In a civil action brought by husband and wife for damages for assaults committed on the wife by the defendant, the particulars of the complaints made by the wife to the husband on his return home on the days on which the assaults took place, are admissible in evidence as corroborating the woman's evidence that she did not consent. HOPKINSON V. PERDUE, 8 C. C. C. 286, 8 O. L. R. 228.

14. **Intent and Design** — MURDER — INSURANCE APPLICATIONS — RES GESTAE.]—On a trial for murder, the theory of the Crown being that the prisoner murdered his wife to secure the insurance, evidence was admitted of various applications made by the prisoner for insurance on the life of his wife, such applications being made at the same time, and under the same circumstances are properly relevant as done in pursuance of a plan affecting the deceased. REGINA V. HAMMOND, 1 C. C. C. 373, 29 O. R. 211.

15. **Intent and Design.**]—Evidence admitted to prove former husband of prisoner taken suddenly ill after eating food prepared by prisoner, and symptoms attending his illness and death were those of arsenical poisoning on a charge of murder of a second husband by arsenical poison. REGINA V. STERNAMAN, 1 C. C. C. 1, 27 O. R. 33.

16. **Irrelevancy** — PRIOR CHARGE OF THEFT — JUDGE'S CHARGE.]—On the trial of the accused for theft, evidence was given in reference to a former charge of theft which the jury had found was a loan and prisoner acquitted of that charge. The trial Judge instructed the jury fully as to the nature of the former transaction and their minds were freed from any possible misapprehension as to its nature. It was held that though the Crown had gone into some evidence which was not relevant, the instructions of the trial Judge were such as to leave the real issue to the jury and no miscarriage had taken place. REX V. MENARD, 8 C. C. C. 80.

17. **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 rom 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, 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. PREEPER v. THE QUEEN, 15 S. C. R. 401.

18. **Negative Evidence.**]—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 or 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 Judge at the trial refused to admit this evidence :—Held, that the evidence was properly rejected. REGINA v. HEROD, 29 C. P. 428.

19. **Previous Incontistent 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, 22 U. C. R. 49 .

20. **Rape** — STATEMENT OF PROSECUTRIX.]—A statement made by a prosecutrix on a charge of rape made the next day after the alleged commission of the offence is not admissible as evidence, it being held that too great a time had elapsed, and that the statement was not the unstudied outcome of the feelings of the woman. REGINA v. GRAHAM, 3 C. C. C. 22, 31 O. R. 77.

21. **Rape** — REFUTATION OF COMPLAINANT'S TESTIMONY.]—Where a complainant on a charge of rape denies in cross-examination circumstances tending to show that instead of detesting and avoiding the accused, she was yet so desirous of his company, that she angrily resisted the interference of her mother when the latter wanted to put an end to what she considered an impropriety, it is competent for the accused to introduce testimony contradicting the complainant's denial. REX v. RIENDEAU, 4 C. C. C. 421, Q. R. 9, Q. B. 147.

22. **Similar Acts Showing Design Admissible.**]—The mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to the issue, and it may be so relevant if it bears upon the question whether the act alleged to constitute the crimes charged in the indictment were designed or accidental. REGINA v. COLLYNS, 4 C. C. C. 572.

XVI. REBUTTAL.

1. **Answer to Question Foreign to the Issue** — RIGHT TO CONTRADICT.]—The answer of a witness to a question foreign to the issue is final, and rebuttal evidence is not admissible. REGINA v. LAPIERRE, 1 C. C. C. 413.

2. **Reply.**]—The theory of the defence, on an indictment for murder, 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. REGINA v. SPARKHAM AND GREAVES, 25 C. P. 143.

3. **Weakening Alibi** — DISCRETION.]—After the cases for the Crown and the defence were closed, the Crown called a witness in rebuttal whose evidence changed by a few minutes the exact time of the crime as stated by the Crown previous witnesses, and which tended to weaken the alibi set up by the defence. It was held that to allow the evidence was entirely in the discretion of the Judge and there was no legal prejudice to the accused as he was allowed the opportunity to cross-examine and meet evidence. REX v. WONG ON, 8 C. C. C. 423, 10 B. C. R. 555, 24 C. L. T. Occ. N. 384.

XVII. WEIGHT OF.

1. **Conflicting Evidence**]—The magistrate cannot weigh conflicting evidence to try whether the prisoner is guilty of the crime charged. REGINA v. RENO, 4 P. R. 281; Re BURLEY, 1 C. L. J. 20.

2. **Insufficiency of, Objection to.**]—In criminal proceedings the insufficiency of the evidence can be objected to at the close of the case for the Crown. REGINA v. GARNEAU, 4 C.C.C. 69, Q. R. 82, B. 447.

3. **Sufficiency of to Prove Charge of Incest in Quebec.**]—The relationship for the purpose of establishing a charge of incest in Quebec must not be proved by parol testimony, unless it is first shown that the extracts from the registers of civil status cannot be produced. REGINA v. GARNEAU, 4 C. C. C. 69, Q. R. S., Q. B. 447.

4. **Reserved Case.**]—There is no appeal to the Supreme Court of Nova Scotia from criminal trials before the county court Judge but by way of a case reserved, and that Judge cannot reserve a case or submit any question depending upon the facts or the weight of evidence, which must be decided by the county court Judge. REGINA v. MCINTYRE, 3 C. C. C. 413, 31 N. S. R. 422.

5. **Reviewing Evidence.**]—A Judge in chambers has power to review and decide on the sufficiency of the evidence returned by the committing magistrates, or, if necessary, to hear further testimony. REGINA v. TUBBEE, 1 P. R. 98.

6. **Weight of**—PROVINCE OF JURY IN CONSIDERING.]—The acceptance or rejection of evidence in a case where conflict arises, is a matter entirely within the jury's scope of inquiry. When therefore the jury exercises their discretion, and their verdict is based on such evidence as they believed and accepted, it cannot be said to be against the weight of evidence, where, however, there is an absolute failure of evidence to sustain the verdict, the trial Judge will grant leave to apply to the Court of Appeal for a new trial. R. v. HARRIS, 2 C. C. C. 75.

7. **When New Trial will be Granted upon the Ground that Conviction is Against Weight of Evidence.**]—Where a new trial is applied for upon the ground that the verdict is against the weight of evidence, the question is whether the verdict is one that the jury as reasonable men would properly find. REGINA v. BREWSTER, 4 C. C. C. 36, 2 TER. L. R. 353, 377.

XVIII. MISCELLANEOUS.

1. **Abduction**—POSSESSION OF FATHER—ABANDONMENT OF INDUCED IN U. S. A., AND "TAKING" IN CANADA—JURISDICTION—EVIDENCE.]—Prisoner was indicted for having, at the city of Victoria, unlawfully caused to be taken a certain unmarried girl, to wit, one B.R., being under the age of sixteen years, out of the possession and against the will of her father, contrary to s. 283 of the Criminal Code. The evidence shewed that the girl, by persuasion of letters written by the prisoner in Victoria, Canada, addressed to and received by her within the State of Washington, U.S.A., was induced to leave her father's house in that State and meet the prisoner at Victoria. Upon meeting her there he suggested that it was not too late for her to return home, but she declined, and the prisoner thereupon took her to a house near Victoria, where they spent the night together :—Held, per Davie, C.J., at the trial, convicting the prisoner, that the court had jurisdiction as the offence was wholly committed within Canada. Upon case stated for the opinion of the Court of Criminal Appeal, Davies, C.J., and Crease, J., affirmed the judgment :—Held, per McCreight, Walkem and Drake, J.J., quashing the conviction, that it was essen-

tial to the offence that the girl should have been in possession of her father at the time of the taking, and that, upon the facts when she met the prisoner at Victoria she had already abandoned that possession Per McCreight and Walkem, J.J., that the reception by the girl of the letters was the motive cause of her abandoning her father's possession, and therefore a material factor in the offence, which, consequently, in part took place outside the jurisdiction. Per Walkem, J.: That the letters so far as they held out the inducement, should not have been admitted in evidence at the trial. REGINA v. BLYTHE, 4 B. C. R. 276.

2. **Admissibility**—PERJURY — JUDGE'S NOTES OF PERJURED EVIDENCE.]—Held that, on the trial of charge of perjury, the production of a book purporting to contain full notes of the evidence taken by the trial Judge (who was proved to have actually taken notes) in the case in which the perjury was alleged to have been committed, and proved to be in the Judge's handwriting, and to be signed by him, afforded, in view of the N. W. T. Act, R. S. C. c. 50, s. 69, proper and sufficient evidence of the statement in respect of which the perjury was assigned. REGINA v. MILLS, 11 OCC. N. 28, 1 TERR.L. R. 297.

3. **Certified Extracts from Registers of Acts of Civil Status (Que.)**—FAILURE TO GIVE TEN DAYS' NOTICE—CANADA EVIDENCE ACT.]—The Civil Code (Que.) article 1207 provides thnt duly certified extracts from public registers are authentic and made proof of their contents. The provisions of sec. 19 of The Canada Evidence Act, 1893, do not apply to the registers of acts of civil status (Que.); the Evidence Act also containing a provision that the laws of evidence in force in any province shall apply, subject to any contrary enactment of Parliament to all proceedings taken therein. REX v. WILLIAM LONG, 5 C. C. C. 493, Q. R. 11, K. B. 328.

4. **Charge of Resisting Bailiff in Execution of Distress.**]—Upon the charge of resisting and wilfully obstructing a bailiff in the execution of a distress, it is necessary for the prosecution to show that the rent was due and in arrears, and the defence can offer evidence that at the time of the distress there was no rent in arrears. REX v. HARRON, 7 C. C. C. 543, 24 OCC. N. 10, 6 ONT. L. R. 668, 2 O. W. R. 903.

5. **Collateral Facts** — ANIMUS.] — Evidence of collateral facts, otherwise inadmissible, is frequently admitted in criminal proceedings to show criminal intent. REGINA v. MCBERNY, 3 C. C. C. 339. 29 N. S. R. 327.

6. **Consent of Accused's Counsel to Admission of Evidence.**]—Evidence formerly inadmissible in a case of felony even if the counsel for the accused consents to the admission of such evidence is now admissible on a charge which under the old distinction was a felony, where counsel for the accused consents to such evidence, sec. 535 of the Code, which abolishes the distinction between felony and misdeamenour, providing that proceedings in all indictable offences shall be conducted in the same manner. REX v. FOX, 7 C. C. C. 457.

7. **Copy** — COSTS — TIME FOR PAYMENT — JUSTICE OF THE PEACE.]—A bylaw of a town council which is not authenticated in accordance with the provisions of article 4380, R. S. Q., cannot be admitted in evidence, and a copy which does not import that the original has been signed by the president and the secretary-treasurer cannot be made the basis of a prosecution. 2. A conviction by a justice of the peace which gives only eight days to a party to pay the costs which he is adjudged to pay, in contravention of article 4598 R. S. Q., will be quashed upon appeal to the Superior Court. TASSE v. BEAUBIEN, 4 Q. P. R. 372.

8. **Coroner's Inquest** — JUROR — CONSTABLE.]—L., the constable to whom the coroner delivered the summons for the jury, was at the inquest sworn in as one of the jury, and was sworn and gave evidence as a witness ; and Y., a juryman, was also sworn and gave evidence as a witness ;—Held, that the fact of L. being such constable, did not preclude him from being on the jury, nor did either of such positions preclude him from giving evidence ; and so also Y. was not precluded. REGINA v. WINEGARNER, 17 O. R. 208.

9. DESTROYING TREES.]—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 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, 10 O. R. 553.

10. **Husband and Wife**—FAILURE TO SUPPORT—CRIMINAL CODE SEC. 210. REGINA v. ROBINSON, 1. C. C. C. 28, 28 O. R. 407.

11. **Insolvent Act**—EVIDENCE — IMMATERIAL ALLEGATION.]—On the trial of an indictment against an insolvent for (among other alleged offences) disposing of property which remained unpaid for, otherwise than in the ordinary course of business, it is competent for the defendant to give in evidence the reasons for the transfers at the stated time. Where an indictment against an insolvent alleged that having made an assignment under the Insolvent Act, he mutilated and altered one of his books; and the evidence was that the mutilation or alteration took place about three months previous to the defendant's assignment; the jury found that the act was done with intent to defraud his creditors; and on a case reserved, it was objected that the evidence did not support the indictment; but held, that the allegation of having made an assignment was immaterial, and the conviction was sustained. If an insolvent has book debts owing to him, however small, he is bound to insert them in his statement; and if he omits them with intent to defraud his creditors, he is guilty of a misdemeanour, and the fact of calling the statement a schedule in the indictment is not a misdescription. REGINA v. McLEAN, 1 P. and B. N. B. R. 377.

12. **Reserved Case** — AT INSTANCE OF CROWN—CODE SEC. 743.]—It is competent for the Crown to obtain a reserved case on the question whether there was any evidence of insanity set up by the defence on a charge of theft, notwithstanding the acquittal of the prisoner by the jury in the face of the Judge's instructions on the point. R. v. PHINNEY, 6 C. C. C. 469, 36 N. S. R. 164.

13. **Secrecy of Ballot.**—VOTER TESTIFYING AT CRIMINAL TRIAL.]—On the trial of a criminal offence, a voter can be asked to state for which candidate he voted, the provisions of sec. 71 of the Dominion Election Act being that no person shall be required to state for whom he voted in any legal proceeding "questioning the election or return," and not in any legal proceeding whatsoever. REGINA v. SAUNDERS, 3 C. C. C. 278.

14. **Several Charges**—HEARING EVIDENCE ON SECOND BEFORE DECIDING FIRST—CONVICTION.]—The prisoners were tried before the County Court Judge on two separate charges of receiving, on two separate days, stolen goods knowing them to be stolen, and of house-breaking and stealing on the second of two days. At the close of the case for the Crown on the first charge, on the 23rd December, the Judge found a prima facie case of receiving, and adjourned the case a week to let in evidence for the defence. Meanwhile he proceeded with the trial of the second charge, and remanded the prisoners for sentence. On the 30th December, he tried them on the third charge, and acquitted them on it. On the 31st December he sentenced them on the first two charges. The Judge certified that he came to his finding on the first charge before hearing the second, and was not conscious of having been biased on the latter, by the evidence given on the first:—Held, that, inasmuch as the circumstances of the three charges were altogether different as to time and place, and the only identity was in the persons charged, and in respect to the principal witness—and in view of what the learned Judge stated, and notwithstanding the expediency of not mixing up criminal charges—the convictions should be upheld. REX v. BULLOCK AND STEVENS, 24 Occ. N. 9, 6 O. L. R. 663, 2 O. W. R. 436, 901.

15. **View by the 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 any one 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 any one 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. c. 174, s. 259. REGINA v. PETRIE, 20 O. R. 317.

11. **Witnesses**—INDORSING NAMES OF WITNESSES ON INDICTMENT—ABORTION—FORM OF INDICTMENT—CRIM. CODE SS. 273 & 645.]—The provisions of s. 645 of the Criminal Code requiring the names of all witnesses examined by the grand jury to be indorsed on the bill of indictment are directory only and an omission so to indorse does not invalidate the indictment. An indictment under s. 273 of the Code charging accused "with unlawfully using on her own person . . . . with intent thereby to procure a miscarriage" (without stating whose miscarriage), is sufficient REX. v. HOLMES, 9 B. C. R. 294.

See also APPEAL — BAWDY HOUSE — CERTIORARI — CONSPIRACY — EXTRADITION — FORGERY — GAMING — HUSBAND AND WIFE — NEW TRIAL — PERJURY — RAPE — SEDUCTION — WITNESSES.

EXTORTION.

1. **Causing Summons to be Served for Ill-Treating a Horse — Intent to Collect a debt.**]—The service of a summons for ill-treating a horse with the intent to thereby secure payment of a debt is an offence under Code sec. 406 (c). It is immaterial that the information was laid by a third person without any such intent to extort. REX v. CORNELL, 8 C. C. C. 416.

2. **Two Magistrates.**]—Where two defendants sat together as magistrates, and one exacted a sum of money from a person charged before him with 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, 20 U. C. R. 272.

See also BLACKMAIL.

EXTRADITION.

I. APPEAL.
II. BAIL.
III. EXTRADITION CRIMES.
IV. INITIATION OF PROCEEDINGS.
V. JURISDICTION.
VI. NATURE AND SUFFICIENCY OF EVIDENCE.
VII. WARRANT OF COMMITMENT.
VIII. MISCELLANEOUS.

I. APPEAL.

1. **Appeal to Supreme Court of Canada**—PROHIBITION — MATTER ARISING OUT OF CRIMINAL CHARGE.]—The Supreme Court of Canada has no jurisdiction to entertain an appeal from the judgment of a provincial court refusing a motion for a writ of habeas corpus in an extradition proceeding, inasmuch as such a proceeding is one which arises out of a criminal charge within the meaning of sec. 2 of the Supreme Court Act 55 Vict. c. 25. RE GAYNOR & GREENE, (No. 10), 10 C. C. C. 21, 36 S. C. R. 247.

2. **Distinction Between Habeas Corpus Before and After Committal.**]—A Judge of the Superior Court can grant a writ of habeas corpus before an extradition commissioner has concluded his enquiry, and made his committal, to examine in to the commissioner's jurisdiction to make the enquiry. On a writ of habeas corpus issued before committal no review of the charges against the accused can take place other than to determine the question of jurisdiction. EX PARTE GREENE, (No. 1) 7 C. C. C. 375, 22 Que. S. C. 91.

3. **Habeas Corpus Pending Hearing of Commissioner.**]—In extradition matters, as soon as an accused can establish the illegality of his arrest he has the right to take habeas corpus proceedings without being obliged to await the decision of the commissioner upon the merits. EX PARTE GREENE, (No. 2), 7 C. C. C. 389, 22 Que. S. C. 109.

4. **Motion to Quash on Appeal** — HABEAS CORPUS.]—A motion to the Supreme Court of Canada to quash an appeal in a case of habeas corpus arising out of extradition proceedings is curam non judice, as section 31 of the Supreme and Exchequer Courts Act provides that "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". RE LAZIER, 3 C. C. C. 419, S. C. R., 30 O. K. 419, 26 A. R. 260.

5. **Sufficiency of Charge can be Raised on Habeas Corpus After Committal.**]—The question of the sufficiency of a charge as enumerated in the proceedings before an extradition Commissioner is a matter properly to be taken cognizance of on a writ of habeas corpus after the committal by the commissioner. EX PARTE GREENE (No. 1) 7 C. C. C. 375, 22 Que. S. C. 91.

II. BAIL.

1. **Bail After Commitment.**]—A Judge of the court of King's bench of the Province of Quebec, sitting in chambers, has jurisdiction to grant bail to fugitives after commitment for extradition. Circumstances under which such will be granted are where the fugitives' lives are in danger by reason of confinement. RE GAYNOR & GREENE, (No. 9) 9 C. C. C. 542.

2. **Discretion of Commissioner.**]—Bail should not be granted, under ordinary circumstances, either prior to or pending the adduction of evidence before the Extradition Commissioner. UNITED STATES v. WEISS, 8 C. C. C. 62.

3. **Jurisdiction** — FALSE PRETENCES.] Where extradition proceedings were pending upon an information and warrant charging the offender with obtaining valuable securities by false pretences, the county Judge sitting as an extradition Judge held that he had no jurisdiction to grant bail in proceedings under the Extradition Act. RE STERN, 7 C. C. C. 191.

4. **Right to Bail of Person Arrested—Committed for Extradition.**]—The court should be very slow to admit to bail a person who has been arrested or committed for extradition. RE WATTS, 5 C. C. C. 538, 3 O. L. R. 279.

III. EXTRADITION CRIMES.

1. **Accessory.**]—An accessory before the fact is liable to extradition, but an accessory after the fact is not. REGINA v. BROWN, 6 A. R. 386, 31 C. P. 484.

2. **Assault with Intent.**]—A warrant charging that the prisoners "did feloniously shoot at, &c., with intent, &c., to kill and murder," sufficiently charges an "assault with intent to commit murder," the words used in the treaty and statute. REGINA v. RENO, 4 P. R. 281.

3. **Assault with Intent.**]—The prisoner was charged with assault with intent to commit murder, in that he had opened a railway switch with intent to cause a collision, whereby two trains did come into collision, causing a severe injury to a person on one of them :—Held, that this was not an "assault" within the statute. IN RE LEWIS, 6 P. R. 236.

4. **Assault with intent to Murder** — DUTY TO PROVE "INTENT".]—"Assault with intent to murder" is an extraditional crime under the Extradition Treaty between Great Britain and the United States, but it is necessary for the prosecution to establish before the extradition Judge, the intention to commit murder, and no matter how serious the assault may be, unless it is accompanied with the intent to murder, the accused is not liable to be extradited. RE KELLY, 5 C. C. C. 541, 22 Occ. N. 262.

5. **Burglary.**]—Burglary is not an offence within the Ashburton Trenty or the statutes of Canada, passed to give effect to it. IN RE BEEBE, 3 P. R. 273.

6. **Child-Stealing** — FOREIGN LAW — ASSUMPTION THAT CRIME IDENTICAL.]—The prisoner was committed for extradition to the United States for child-stealing. On habeas corpus proceedings in the certiorari made thereof, the objection was taken that there was no evidence that the facts disclosed a crime under the law of the foreign state. The crime of "child-stealing" being mentioned in the treaty as one of the extradition crimes, the court

held in the absence of evidence to the contrary it should assume the crimes to be identical in the two countries. Under R. S. C. c. 142, sec. 9, s.-s. 3, it would have been competent for the prisoner to have shown that the crime of child-stealing under the foreign law was not covered by the facts deposed to and if such had been proven, the prisoner would have been discharged but in the absence of such evidence the prisoner must be remanded. REX V. WATTS, 5 C. C. C. 246, 22 S. C. R. 180.

7. **Crime Committed in a Foreign Country.**]—Murder being an extraditable offence under the Treaty of Washington, 1842, the courts of this country will take notice that it is punishable as a crime in the United States. PORTER V. MCMAHON, 25 N. B. R. 211.

8. **Extradition Act (1886)** — EXTRADITION CRIME — EXTRADITION ARRANGEMENT.]—The Extraditions Act of 1886 (R. S. C. 1886, ch. 142) and of 1889 (52 Vict. ch. 36) do not mention the crime of unlawfully receiving and having stolen goods and chattels knowing the same to be stolen, but the words of the interpretation clause of the Act of 1886 extend the meaning of extradition crime to an extradition arrangement, and the extradition arrangement of 1890 with the United States of America must be deemed to be covered by that clause. RE COHEN, 8 C. C. C. 251, 8 O. L. R. 143.

9. **Forgery.**]—The prisoner using an assumed name, represented himself to a shopkeeper to be a traveller for a certain wholesale firm, and after going through the form of taking an order for goods obtained the indorsement of the shopkeeper to a draft drawn by him in his assumed name on this firm, and this draft was then cashed by him at the bank :—Held, that this was forgery and that the prisoner should be extradited. IN RE LAZIER, 30 O. R. 419, 26 A. R. 260.

10. **Forgery.**]—Held, that a person convicted of forgery or uttering forged paper in the United States, who escaped to Canada after verdict, but before judgment, was liable to be delivered over. IN RE WARNER, 1 C. L. J. 16.

11. **Forgery.**]—Held, that upon the facts set forth in the judgment the prisoner, who had been committed for extradition by the mayor of Toronto upon alleged crime of forgery, had been committed upon insufficient evidence and must be discharged. IN RE KERMOTT, 1 C. L., Ch. 253.

12. **Forgery.**]—A prisoner was arrested here for having committed in the United States the crime of forgery, by forging, coining, &c., spurious silver coin, &c. :—Held, that the offence as above stated, did not constitute the crime of "forgery" within the meaning of the Extradition Treaty or Act. Definition of the term "forgery" considered. IN RE SMITH, 4 P. R. 215.

13. **Forgery.**]—A prisoner was committed for extradition to the United States on a charge of having forged a resolution of a city council relating to the issue of bonds, of having forged a bond of said city, and of uttering the same :—Held, on an application for his discharge, that the resolution being an essential preliminary to the issue of the bond, and the bond being an instrument which might be the subject of forgery, although not executed in strict accordance with the code of the state in which the bond was issued, there was a prima facie case made out against the prisoner, and that he should be remanded as to the charge of forgery. REGINA V. HOVEY, 8 P. R. 345.

14. **Forgery** — FORM OF INFORMATION.] —In extradition proceedings the information charged that the informant "hath just cause to suspect and believe, and doth suspect and believe that H. L. Lee," the prisoner, "is accused of the crime of forgery," &c., "for that the said H. L. Lee &c., "did feloniously forge" some seventy-eight orders for the payment of money. The 79th charge was that the said H. L. Lee, at the aforesaid several times, &c., did feloniously utter, knowing the same to be forged, the said several orders, &c. :—Held, sufficient for that the information charged that the prisoner "did feloniously forge," &c., and the allegation that the informant believed that the prisoner "is accused," etc., might be treated as surplusage; but even if objectionable at common law it was good under s. 11 of 32 & 33 Vict. c. 30 (D), and 32 & 33 Vict. c. 27 (D); and moreover the 79th charge was free from ob-

jection :—Held, also, that in these proceedings, a plea to the information is not required. IN RE H. L. LEE, 5 O. R. 583.

15. **Forgery** — IDENTIFYING FORGED NOTE.]—The depositions produced and acted upon before the committing Judge failed to shew that the note, alleged to be forged, was produced and identified by the deponents or any of them :—Held, that this constituted a valid ground for refusing extradition; and that there was no power to remand the accused to have further evidence taken before the extradition Judge as to such identification. IN RE PARKER, 19 O. R. 612.

16. **Forgery**.]—In extradition proceedings, it is sufficient if the evidence disclose that the offence under the Extradition Act is one which, according to the laws of Canada, would justify the committal for trial of the offender had the offence been committed therein, it not being essential to shew that the offence was of the character according to the laws of the foreign country where it was alleged to have been committed; and quære, whether evidence is admissible to shew what the foreign law is. In pursuance of a fraudulent conspiracy between the prisoner and his brother, a cheque was drawn by the latter under a fictitious name, on a bank in which an account had been opened by him in such fictitious name, there being to the knowledge of the prisoner, no funds to meet it, and which, on the faith of its being a genuine cheque, another bank, was induced by the prisoner to cash :—Held, that the cheque was a "false document" both at common law and under s. 421 of the Criminal Code, 1892, and that there was sufficient evidence to justify the committal of the prisoner for extradition for uttering a forged instrument. Regina v. Martin, 5 Q. B. D. 234, distinguished. Where, in such proceedings, the warrant of a commitment stated that the prisoner had been "committed" for an indictable offence, instead of his having been "accused" thereof, the fact that the evidence shewed such an offence will not warrant the court in remanding the prisoner for extradition; but the court may, if necessary, permit the return to be amended, and for such purpose allow it to be taken off the files and refiled. RE MURPHY, 26 O. R. 163.

17. **Forgery**.]—The prisoner's brother opened a bank account in an assumed name and drew cheque from time to time thereon. Several of these cheques were paid, but the last one the prisoner cashed at his own bank, knowing that there were no funds to meet it :—Held, per Haggarty, C. J. O., and Maclennan, J. A.,—That there was evidence from which it might reasonably be inferred that the opening of the account in the assumed name was part of conspiracy between the prisoner and his brother to defraud and that there was, therefore, the fraudulent uttering of a false document which would constitute forgery. Per Burton and Osler, J. J. A.,—That as the account was a genuine one, and there was no false representation as to the drawer of the cheque, the offence of forgery was not made out. Held, also, per Haggarty, C. J. O., and Maclennan, J. A.,—That it is not necessary to shew in extradition proceedings that the prisoner is liable to conviction of the crime charged according to the law of the demanding country. Per Burton and Olser, J. J. A.—That it must be shewn that the prisoner is liable to conviction of the crime charged, according to the law of both countries. In the result of the judgment below, 26 O. R. 163, was affirmed. IN RE MURPHY, 22 A. R. 386.

18. **Forgery**. — HABEAS CORPUS — DEFECTIVE WARRANT OF COMMITMENT.]—The prisoner had been committed for extradition on the charge of uttering a forged document, being a cheque drawn on a Chicago bank. On a motion for habeas corpus it was held, 1. That where the warrant of commitment is defective the court has no jurisdiction to look at the depositions returned, and on finding from them that an extradition crime has been committed, to remand the prisoner; there is no jurisdiction over the individual except such as is given by the statute, and the warrant is therefore the only authority for the detention of the prisoner, that there is no inherent power to remand a prisoner where the warrant is defective. 2. The court has power to permit the return to a writ of habeas corpus to be amended and to allow it to be taken off the files that the amendment may be made. 3. The proper practice on the return of a writ of habeas corpus appears to be to bring into court and read the return, whereupon, and not before, it

is to be filed by the proper officer; a supplementary return of a second warrant in proper form to made remedy a defect in the original warrant, may be treated as the return to the writ, the original and supplementary writs being read together. 4. That a cheque having a fictitious signature which was cashed by the payee in another bank from that on which it was drawn and in which a fictitious account had been opened in pursuance of a fraudulent conspiracy between the prisoner and his brother, whereby the bank was defrauded, was a false document within sec. 421 of the Criminal Code, as well as at common law. 5. That the evidence disclosing the crime of uttering such document justified the committal of the prisoner as having committed an extradition crime. 6. So as it is established by evidence sufficient for the purpose, that a state of facts exists, which had it existed in Canada, would justify the committal of the accused for trial on the offence charged, if it be an extradition crime by the treaty between the respective countries, the duty to commit under sec. II. (R. S. C. 1886, Code 142) arises; and it is unnecessary to prove the foreign law in order to show that by such foreign law the fugitive has committed the extradition crime of which he is accused. IN RE MURPHY, 2 C. C. C. 562, 22 A. R. 386.

19. **Forgery** — UTTERING FALSE DOCUMENT — CODE SEC. 421.]—Per Haggarty, C. J. O., and Maclennan, J. A.,—Where evidence shows a case in which there would be clear ground for committing the accused for trial in Canada, if offence had been committed in Canada, it is unnecessary to prove by evidence that the extradition offence is such as would render the accused liable to a similar charge by the law of the place where it was committed. Per Burton and Osler, J. J. A., although it may be perfectly clear that the offence charged is forgery according to Canadian law that in itself would not justify an order for extradition unless it be made to appear to the tribunal dealing with the matter that it is also an offence according to the law of the country where it was alleged to have been committed. RE MURPHY, 2 C. C. C. 578, 26 O. R. 163.

20. **Forgery.**]—To support a commitment for extradition on a charge of forgery in regard to certain admission tickets proper legal evidence must be given of the truth of the charge, and a prima facie case is not shown where neither the genuine or one of the alleged forged tickets is produced or identified or its non-production legally explained. R. v. HARSHA 10 C. C. C. 433.

21. **Forgery**—UTTERING FORGED ORDER FOR PAYMENT OF MONEY—FORGED INDORSEMENT--TRYING FOR OFFENCE OTHER THAN THAT FOR WHICH PRISONER EXTRADITED—APPEAL—DEMURRER.]—The prisoner was tried at the October Term, 1884, of the Supreme Court of Halifax, the indictment charging: 1. That the said J. C. did feloniously offer, utter, dispose of and put off, knowing the same to be forged, a certain check or order for the payment of money, which said forged order is as follows, that is to say—

No. E. 43460.

Halifax, N.S., February 13th, 1884

Merchants' Bank of Halifax :

Pay William McFatridge, or order, two hundred and twenty-four dollars and seventeen cents ($224.17).

(Sgd). LONGARD BROS.

And indorsed as follows :

"W. McFatridge."

with intent to defraud. 2. That the said J. C. afterwards, to wit, on the day and year aforesaid, having in his custody and possession a certain other order for the payment of money, which said last mentioned order is as follows, that is to say—

No. E. 43460.

Halifax, N.S., February 13th, 1884

Merchants' Bank of Halifax :

Pay William McFatridge, or order, two hundred and twenty-four dollars and seventeen cents ($224.17).

(Sgd.) LONGARD BROS.

He, the said James Cunningham, afterwards, to wit, on the day and year last aforesaid, at Halifax aforesaid, feloniously did forge on the back of said last mentioned order a certain indorsement of said order for the payment of money, which said forged indorsement is as follows, that is to say, "W. McFatridge," with intent to defraud. 3. That the said J. C. afterward, to wit, on the day and year aforesaid, feloniously did offer, utter, dispose of and put off, a certain other forged order for the payment of money, which forged order is as follows, that is to say—

No. E. 43460.

Halifax, N.S., February 13th, 1884.

Merchants' Bank of Halifax :
Pay William McFatridge, or order, two hundred and twenty-four dollars and seventeen cents ($224.17).
(Sgd.) LONGARD BROS.
and indorsed "W. McFatridge."
With intent thereby to defraud." Counsel for prisoner, before the jury were sworn, objected to the jurisdiction of the court on the ground that the indictment charged an offence or offences different from that for which the prisoner was extradited, to which plea the Attorney-General demurred. Judgment was pronounced sustaining the demurrer and the trial proceeded. The prisoner was convicted on the first and third counts of the indictment, and acquitted on the second. At the close of the trial counsel for prisoner renewed his application. The C.J., agreed to reserve a case for the opinion of the Judges and submitted : (1) Whether the prisoner was indicted and tried for another and different offence, or other and different offences, than that for which he was extradited at the instance of the Government of Canada ; and if so, whether the court had jurisdiction to try and convict the prisoner of such offence or offences. (2) Whether the evidence on the part of the Crown, as reported herewith, is sufficient to sustain a conviction on the first and third counts of the indictment or on either of those counts. The papers put in evidence on the trial to be considered and read as part of the case. The majority of the Supreme Court (N.S.) :—Held, that the prisoner was properly convicted on the third count (6 R. & G. 31):—Held, per Fournier, Henry and Taschereau, J.J., (Ritchie, C.J., and Strong, J., dissenting), that evidence of the uttering of a forged indorsement of a negotiable check or order is insufficient to sustain a conviction on a count of an indictment charging the uttering of a forged check or order. On the second question reserved, therefore, the judgment of the court below should be reversed and the prisoner ordered to be discharged.—Per Ritchie, C.J. The question raised by the demurrer was not properly before the Court in Appeal, the court below having been unanimous with respect to it.—Per Strong, J. The court below rightly held, on the authority of Rex v. Faderman (Den. C.C. 572), that the question raised by the demurrer was not properly before the court, the Chief Justice having given judgment on the demurrer overruling it at the trial. Moreover, there was nothing in the law under which the prisoner was extradited to prevent the court from trying him for any offence for which he was, according to the law of the Dominion, justifiable before it.—Appeal allowed. THE QUEEN v. CUNNINGHAM, CASS. DIG. (2 ed.) 194.

22. **Grand Larceny**—NO OFFENCE IN CANADA—NAME OF CRIME.]—The accused was charged with having committed grand larceny and was committed for extradition. It was held on habeas corpus proceedings that facts and the evidence proved a crime in both Canada and the United Stntes and on the objection that grand larceny was not an offence in Canada, the name of the crime was immaterial. RE F. H . MARTIN, 8 C. C. C. 326.

23. **Habeas Corpus** — CONSPIRACY TO DEFRAUD — OVERT ACT — WARRANT OF REMAND — OMISSION OF DATE.]—1. The offence of conspiracy is not an extradition crime within the treaty between Great Britain and the United States ; but where an indictment for conspiracy has been framed in which acts of larceny are charged as overt acts of the conspiracy the demanding country is not estopped from treating them as distinct and separate acts of larceny. 2 Where a prisoner is brought before a competent tribunal, and is charged with an extradition offence, and remanded for the express purpose of affording the prosecution an opportunity of bringing forward the evidence by which the accusation is to be supported ; if in such a case, upon a writ of habeas corpus, a Judge treats the remand warrant as a nullity and proceeds to adjudicate upon the case as though the whole evidence were before him, it would paralyse the administration of justice, and render it impossible for the extradition proceedings to be effective. UNITED STATES v. GAYNOR, 9 C. C. C. 231 (1905), A. C. 128.

24. **Kidnapping**—REMOVAL OF CHILD AFTER DIVORCE BY MOTHER — INTENT TO DEPRIVE PARENT OF POSSESSION—CODE SEC. 284.]—The prisoner was committed for extradition under a charge of having in the State of New York, kidnapped her daughter in order to deprive the father of the child of its possession and control, to which he was entitled by a decree of the Supreme Court of New York State ; the

father having obtained a divorce from the prisoner. On an application for habeas corpus :—Held, 1. That a parent would be guilty of kidnapping a child or of child-stealing in taking such child away from possession and control of the other parent to whom such possession and control had been legally entrusted by order of a court of competent jurisdiction. 2. Such parent would be guilty of the offence notwithstanding the fact that the other parent entitled to the possession and control had not had the actual possession of the child at the time of the kidnapping. 3. International treaties, although concluded between sovereign powers, are for the benefit of, and available by all subordinate States, hence the extradition treaties between Great Britain and the United States enure to the benefit of the separate States of the Union, and apply to offences which are crimes in such separate States, and such crimes as are mentioned in the treaties, and are not limited to offences against the Federal authority, if the offence is a crime both in the law of the demanding country as well as in the country of asylum. RE LORENZ, 9 C. C. C. 158.

25. **Larceny** — WHETHER AN EXTRADITION OFFENCE.]—The Ashburton Treaty the Convention of 1889, and the Extradition Act R. S. C. c. 142, constitute the existing law governing extradition of criminals from Canada to United States. The crime of larceny is comprised both in the extradition arrangement and in the Schedule of Extradition crimes to the Extradition Act ; whatever therefore was larceny by the common law either in Canada or the State where the crime was committed was by the convention of 1889 made an extradition crime, and remains such irrespective of the change of name in Canadian jurisprudence abandoning "larceny" for what is now under the Can. Criminal Code "theft" or "stealing." RE GROSS 2 C. C. C. 67 25 A. R. 83.

26. **Murder by Escaping Slave.**]—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 30 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 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 upon a charge of murder, and the justice before whom he was brought having committed him he was brought up in this court on a habeas corpus, and the evidence returned under a certiorari. It was contended that as 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, that under the Ashburton treaty, and our statute for giving effect to it, C. C. C c. 89, the prisoner was liable to be surrendered. IN RE ANDERSON, 20 U. C. R. 124.

27. **Neutrality**—PIRACY.]—Lawful acts of war against a belligerent cannot be either commenced or concluded in a neutral territory. IN RE BURLEY, 1 C. L. J. 34.

The fact that the person is charged with piracy committed in the foreign country, ought not to prevent the government of the country where the fugitive is found, from surrendering him on the charge of robbery made and proved in the latter country. IB.

28. **Offence at Date of Commission.**]—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. IN RE HALL, 3 O. R. 331.

29. **Offence by Laws of Each Country.**]—Held, that under the Extradition Act, 1877 [40 Vict. c. 25 (D)],it is essential that

the offence charged should be such as if committed here would be an offence against the laws of this country. IN RE JARRARD, 4 O. R. 265.

See in re Murphy, 26 O. R. 163, 22 A. R. 386.

30. **Offence Referred to by Wrong Name**—THEFT—LARCENY.] — Where there is evidence of the commission of an act which is recognized as a crime by the law of Canada and the law of the country demanding the extradition of the accused person, extradition will lie, though in the proceedings therefor the offence is referred to by a wrong name. Larceny is, by the Ashburton treaty, the convention of 1889, and the Extradition Act, specified as a crime for which extradition to the United States will lie, but larceny is not, by that name, recognized as a crime, by the Criminal Code, 1892, the terms there used to describe the same offence being "theft" or "stealing" :—Held, that where there was evidence of the commission of the crime of theft the prisoner should be held for extradition, although in the proceedings for extradition the offence was described as larceny. IN RE GROSS, 25 A. R. 83.

31. **Perjury**--FALSE AFFIDAVIT—APPLICATION OF TREATIES—CODE SEC. 145-8.] —The Extradition Act by sec. 3 (R.S.C., 1886) is made applicable to any subsequent extradition arrangement entered into with any foreign state, without the necessity of an order in council. Perjury is an extraditable offence by the convention of 1889. Perjury may be committed as an extraditable offence by false swearing of an affidavit in an action for maintainance in a foreign country, without showing that such an affidavit of verification is required or permitted in Canada. RE COLLINS, 10 C. C. C. 71.

32. **Perjury**—FALSE AFFIDAVIT—MANNER OF ADMINISTERING OATH.]—In the evidence tendered on Extradition proceedings for the extradition of the defendant on a charge of perjury (for false swearing of an affidavit in court proceedings in California), was an affidavit purporting to be signed at the foot by the deponent and at the lower left hand corner the Jurat read, "Subscribed and sworn to before me this 14th day of July, 1905, William P. Lowler, presiding Judge of the Superior Court of the State of California, and for the city and county of San Francisco," and the seal of the court was attached. The signature of the Judge was verified by the oral evidence of a witness.:—Held, sufficient authentication within the requirements of sec. 10 of s.s. 2, of the Extradition Act. 2. The evidence showed that the alleged false affidavit was signed by the accused and taken by him before a notary, the accused himself saying, "Mr. Henry, that is my signature, and I swear to the statements therein being true," at the same time raising his right hand, whereupon the notary signed and sealed the affidavit :—Held, that the oath was lawfully administered. 3. If the commissioner finds sufficient evidence of guilt to qualify a commitment the question of a probability of a conviction is not one for his consideration. RE COLLINS (No. 2), 10 C. C. C. 73.

33. **Practice and Procedure.**] — For matters of practice and procedure with list of extradition crimes ; provisions of statute and forms. SEE 9 C. C. C. 264 ET SEQ.

IV. INITIATION OF PROCEEDINGS.

1. **Arrest Without Warrant**--ILLEGALITY —TELEGRAM.]—The arrest of the accused merely on the strength of a telegram received from foreign authorities requesting such arrest is illegal. There must be a proper information laid and warrant issued. RE WALTER A. DICKEY, 8 C.C.C. 318.

2. **Initiation of Proceedings Under, Without Requisition.**]—Extradition proceedings in Canada may be taken not only without any warrant from our own Executive to signify thnt a requisition had been made by the authority of the United States, for the extradition of the offender, but without any such extradition having been in fact made. RE M. B. LAZIER, 3 C. C. C. 167. 30 O. R. 419. 26 A. R. 280.

3. **Initiating Prosecution.**] — The prisoner, using an assumed name, represented himself to a shopkeeper to be a traveller for a certain wholesale firm, and after going through the form of taking an order for goods, obtained the indorsement of the shopkeeper to a draft drawn

by him in his assumed name on the firm, and this draft was then cashed by him at the bank :—Held, that this was forgery and that the prisoner should be extradited. A prosecution under the Extradition Act may be initiated by any one who, if the offence had been committed in Canada, could put the criminal law in motion. In re Burley, 1 C. L. J. 34, and Regina v. Morton, 19 C. P. 9, approved judgment below, 30 O.R. 419, affirmed. IN RE LAZIER, 26 A. R. 260.

4. **Initiating Prosecution** — PRIVATE PROSECUTION — CORROBORATION.]—It is not necessary that it should appear on the face of the extradition proceedings under R. S. C. c. 142, or otherwise, that the information or complaint against the prisoner was laid or made by,or under the authority of the foreign government; but the extradition Judge may receive the complaint of any one who, if the alleged offence had been committed in Canada, might have made it. Canadian enactments and practice in this regard contrast with those of the United States :—Semble, that if an act criminal according to the laws of both countries be committed, the guilty person can be extradited, although it constitute forgery under the laws of one, and larceny under those of the other, both being extraditable offences. Semble, also, that the provisions of the Criminal Code as to corroboration [55 & 56 Vict. c. 29, s. 684 (D)] refer to the trial, and not to the preliminary inquiry before the magistrate. IN RE LAZIER, 30 O. R. 419.

5. **Insufficiency of Information** — HABEAS CORPUS.]—An information based on information and belief and not disclosing that the accused was in Canada and was charged with an extraditable crime is insufficient. RE WALTER A. DICKEY, 8 C. C. C. 321.

V. JURISDICTION.

1. **British Subjects Committing Offences in the United States.**]—Held, that the Ashburton Treaty as to the extradition of fugitive felons, and our Acts passed to give effect to it extend to British subjects committing the offences named in the treaty in the territory of the United States and becoming fugitives to Canada. IN RE BURLEY, 1 C. L. J. 20, 34.

2. **Child-Stealing** — COLLUSIVE DIVORCE — JURISDICTION OF EXTRADITION COMMISSIONER.]—The prisoner had been committed for extradition for child-stealing. The mother of the child stolen had obtained a divorce from her husband. It was held that the father could not set up collusion in obtaining the divorce before the extradition commissioner who had before him the decree of the foreign court and the oath of the mother denying collusion. Such a defence could be raised only on the trial. REX V. WATTS, 5 C. C. C. 246, 22 S. C. R. 180.

3. **Habeas Corpus** — JURISDICTION — RE-ARREST.]—A fugitive discharged on habeas corpus from the commitment of an extradition commissioner who had issued a warrant for the arrest of the fugitive upon a complaint, which upon its face showed that the fugitive was in another province, and outside the territorial jurisdiction of the commissioner can be re-arrested on a warrant issued by the same Commissioner for the same offence as preferred in the first complaint. EX PARTE SEITZ, 3 C. C. C. 127, 8 Q. Q. B. 392.

4. **Habeas Corpus** — RETURN OF — JURISDICTION IN CHAMBERS.]—Under c. 95 of the Consolidated Statutes of Lower Canada a writ of habeas corpus is properly returnable before a Judge in chambers; and sec. 16 of the Extradition Act does not affect this practice as the Extradition Act fully recognizes the former statute and its provisions. RE GAYNOR & GREENE, (No. 8) 9 C. C. C. 496.

5. **Junior Judge.**]—The expression "all Judges, &c., of the county court," contained in s. 5 of the Extradition Act, R. S. C. c. 142, includes the Junior Judges of said court. In re Parker, 19 O. R. 612. RE GARBUTT, 21 O. R. 179, 465.

6. **Jurisdiction** — ISSUING OF WARRANT.]—The jurisdiction of extradition commissioners is limited to the province for which they are appointed, and a warrant issued by an extradition commissioner for the arrest of a fugitive criminal who is neither within nor suspected to be with-

in, his territorial jurisdiction, is irregular and illegal. Ex Parte Seitz, 3 C. C. C. 54, 8 Q. Q. B. 345.

7. **Jurisdiction of Commissioner** — Writ of Prohibition — Habeas Corpus — Bail — Code Sec. 577-586-602.]—The defendants were charged by the United States government with certain offences of the nature of theft and the hearing took place before a commissioner appointed by the Federal Government. The jurisdiction of the commissioner was attacked, but he declared himself competent. Application for writ of prohibition was then made to a Judge and refused. Appeal was taken to the Court of Appeal at Montreal, but pending this appeal defendant applied to the court of King's bench (appeal side) sitting at Quebec for a stay of proceedings; and for a writ of habeas corpus to be admitted to bail :—Held, 1. The court of King's bench (appeal side) sitting at Quebec will not grant a stay of proceedings pending an appeal to that court at Montreal, and it would require very serious reasons to induce the court to order a provisional stay of proceedings by a person who is de facto an extradition commissioner. 2. An extradition commissioner has jurisdiction to admit to bail under sec. 9 of the Act, having similar powers to a justice of the peace. In doing so, however, notice will be taken of the fact that accused is a fugitive from justice, the gravity of the offence, etc. 3. Habeas corpus must be applied for in the district where the prisoner is incarcerated (in the province of Quebec) if no Judges of the court of King's bench were present there a Judge of the Superior Court has con-current jurisdiction in that behalf. 4. Application for bail should be made to a Judge of the district where accused is in custody. Ex Parte Gaynor and Greene, (No. 5) 9 C. C. C. 255.

8. **Jurisdiction of Commissioner Co-Extensive with Limits of Province for which he is Appointed.]**—An extradition Judge or commissioner has jurisdiction over the whole of the province for which he has been appointed and such commissioner or Judge can therefore, issue a warrant for arrest in any other district of the province in which he has jurisdiction, and hold the inquiry in his own district. Ex Parte Greene, (No. 1) 7 C. C. C. 375, 22 Que. S. C. 109.

9. **Jurisdiction to Issue Warrant** — Foreign Warrant — Authenticated Copy.]—To give a Judge jurisdiction to issue a warrant for apprehension there must be either a foreign warrant or an information or complaint made before him. There is nothing in the Extradition Act (R. S. C. c. 142) to show that the existence of a foreign warrant may be proved by the production of an authenticated copy in any other way than by the production of the original. Where an information or complaint is not made or a valid foreign warrant produced at the time of issuance of the warrant for apprehension the mere appearance of the accused before the extradition Judge does not give him jurisdiction to hear the charge as in the case of a justice of the peace hearing a charge when the offence was committed in Canada. In re Bongard, 6 C. C. C. 75, 5 Ter. L. R. 10.

10. **Power of County Court Judge** — Previous Discharge.]—The jurisdiction of a county court Judge under the Extradition Act is limited only by the bounds of the Province and not by those of his county. An extradition Judge has power to inquire into a charge and commit a person for extradition, after a previous inquiry and committal by another Judge and discharge under habeas corpus. In re Parker, 10 C. L. T. Occ. N. 373.

11. **Warrant of Arrest Must Contain Date of Commission of Offence** — Retroactive Effect.]—A warrant for an offence under an extradition treaty having no retroactive effect will not be considered to contain a sufficient description of the offence unless the date of the examination of the offence is alleged, for if the date of the offence is of a nature to give or to take away the jurisdiction it must be alleged, as the jurisdiction of the party signing the warrant must appear on the face of the warrant itself. Ex Parte Greene, 7 C. C. C. 389, 22 Que. L. C. 91.

VI. Nature and Sufficiency of Evidence.

1. **Alibi** — Identity — Extradition Judge — Forgery — Interested Witness — Corroboration.]—In extradition proceedings for forgery of a draft on a bank in the United States :—Held, that

a Junior Judge of a county court of this Province is an extradition Judge within the Extradition Act, R. S. C. c. 142. Re Parker, 19 O. R. followed. In extradition cases a warrant of commitment may be issued in proceedings instituted in this Province; the previous issue of a warrant in the country demanding extradition not being essential. Re Caldwell, 5 P. R. 217, followed. In such cases evidence in support of an alibi should be refused. A witness identifying the prisoner as the forger was the person who identified him at the bank when he procured the amount of the forged draft; but it did not appear that he had incurred any responsibility to the bank:—Held, that no interest was shewn in the witness so as to require corroboration; and further that the interest must be apparent on the face of the draft or immediately arise from the nature of the transaction or from his own acknowledgement. Regina v. Hagerman, 15 O. R. 598 followed. Semble, in extradition cases the evidence of interested parties need not be corroborated. RE GARBUTT, 21 O. R. 465.

2. **Alibi** — IDENTITY — EXTRADITION JUDGE — VARIANCE FROM PROOF-READING OVER FOREIGN DEPOSITIONS TO PRISONER.]—Where evidence is given by the prosecution before an extradition Judge positively identifying the prisoner, the Judge cannot receive evidence on behalf of the prisoner to shew an alibi; for that would be in effect triyng the guilt or innocence of the prisoner; if the evidence given by the prosecution is sufficient to justify the committal of the prisoner, he must be committed under s. 11 of the Extradition Act, R. S. C. c. 142. Semble, that a prisoner is entitled to go into evidence to disprove his identity; but that means his identity with the person named in the warrant; not his identity with the person who actually committed the extradition crime. The junior Judge of a county court is "a Judge of a County Court" and has the functions of an extradition Judge. Re Parker, 19 O. R. 612 followed. R. S. C. c. 142 6, s.-s. 2, is directory only; and the neglect of a Judge to forward to the minister of justice a report of the issue of a warrant, as required by the sub-section, is not a ground for the discharge of the prisoner. The information upon which a warrant issued committing a person to await extradition for forgery, stated the Christian name of the indorser of the forged instrument as Albert, whereas when the instrument was proved it appeared to be James:—Held, that the variance was immaterial under ss. 57 and 58 of R. S. C. c. 174, which are made applicable to extradition proceedings by s. 9 of R. S. C. c. 142. It was objected by the prisoner that certain depositions taken abroad and put in by the prosecution were not read over to the prisoner as required by s. 70 of R. S. C. c. 174:—Held, that the objection was not one which as a matter of law would entitle a prisoner to be discharged; and it should not be given effect to as a matter of discretion because it was entirely technical in its character. RE GARBUTT, 21 O. R. 179.

3. **Ashburton's Treaty** — EVIDENCE NECESSARY WHERE FUGITIVE CHARGED AND WHERE ALREADY CONVICTED.]—The Ashburton Treaty provides that it is necessary to make the same evidence with respect to the accusation as would be necessary in the country from which his extradition should be demanded, to justify his committal for trial if the crime had been committed there, and where the fugitive is alleged to have been convicted of a crime for which his surrender is asked, a copy of the record of the conviction, duly authenticated should be proved and proof of identity of prisoner with the person so convicted made. IN RE MATTER OF LOUIS LEVI, 1 C. C. C. 74, Q. R. 6, Q. B. 151.

4. **Deposition** — EVIDENCE.]—Where an application for extradition is founded upon deposition evidence, it will be required to strictly conform to the conditions prescribed by the Act for such evidence, and nothing will be inferred in its favour. The warrant of the magistrate in the foreign jurisdiction was dated before the date of the swearing of the deposition. The evidence consisted in part of admissions stated to have been made by the accused, but there was nothing to shew that the admission was not procured by any inducement to the prisoner to make a statement:—Held, the evidence was insufficient upon which to extradite the accused. IN RE OCKERMAN, 6 B. C. R. 143.

5. **Depositions** — STRICT PROOF.]—In extradition cases, the forms and techni-

calities with which the statute surrounds the production of affidavit evidence must be strictly complied with; and therefore —Held, that depositions taken in the United States cannot be read unless certified under the hand of the magistrate who issued the original warrant as being copies of the depositions upon which such warrant issued, although attested by the party producing them to be such true copies; but, semble, the prisoner might be remanded to enable properly certified copies to be produced. In re Lewis, 6 P. R. 236.

6. **Depositions.**]—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 Judge, before whom the extradition proceedings were had, S. stated that 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 of the peace as alleged, and had jurisdiction in the premises :—Held, that the documents were sufficiently authenticated. "Authenticated," as used in s. 9 of 40 Vict. c. 25 (D) is in effect the same as "attested" in s. 2 of 31 Vict. c. 94 (D). In re Weir, 14 O. R. 389.

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. Ib.

Held, that the depositions, &c., 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. Ib.

7. **Embezzlement** — Confession — Admissibility of Foreign Depositions.]— Where the prosecution in extradition proceedings relies on ex parte depositions taken in the foreign state, and it appears such have been sworn on a date subsequent to the date of the foreign warrant, the deposition being therefore irregular, extradition will not be granted on such evidence alone. To make a confession by prisoner admissible in an extradition proceeding, it must be affirmatively proved thnt such confession was free and voluntary, that it was not preceded by any inducements to the prisoner to make a statement held out by a person in authority, or that it was not made until such inducement had clearly been removed. R. v. Ocherman, 6 B. C. R. 142, 2 C. C. C. 262.

8. **Essentials for** — Nature of Evidence.]—To obtain the extradition of a fugitive criminal, the crime imputed to the criminal must be within the treaty, it must be a crime against the laws of both countries, and there must be such evidence before the Extradition Commissioner as would warrant him in sending the case for trial if it were an ordinary case in this country. Ex Parte Seitz, 3 C. C. C. 127, 8 Q. Q. B. 392.

9. **Evidence for the Defence.**]—It is in the direction of the magistrate investigating into a charge under the treaty against a person accused of one of the crimes mentioned in the treaty, to receive evidence for the defence. In re Burley, 1 C. L. J. 20.

10. **Evidence on which Committal Should be Made.**]—The duty laid upon an extradition Judge or Commissioner is to consider whether the evidence adduced in the absence of contradiction, would be such as to justify a magistrate in a similar case under Canadian law in committing the accused for trial. Re Latimer, 10 C. C. C. 247.

11. **Foreign Indictment** — Depositions] —On an application for the discharge of a prisoner committed for extradition under an order of the county Judge of Kent, on a charge of murder :—Per Wilson, C. J., that under the Ashburton Treaty, Art. X.; 31 Vict. c. 94 (D) 33 Vict. c. 25 (D), 33 Vict. c. 30, ss. 4, 5 (D), and the Imperial Acts 33 & 34 Vict. c. 52, and

36 & 37 Vict. c. 60, a certified copy of an indictment for murder found by the grand jury of Erie county, state of New York, U. S., was of itself sufficient evidence to justify the committal of such prisoner for extradition. Per Osler, J., that such indictment was not evidence for any purpose. Per Wilson, C. J., and Osler, J., that the other evidence taken before the county Judge, documentary and viva voce, set out in the report, was insufficient, as it shewed at most that the prisoner was an accessory after the fact, which did not come within the treaty. Per Galt, J., that if the case had turned on the indictment alone, he would have hesitated to accept it as conclusive against the accused : but that the other evidence together with the indictment, was sufficient to warrant his extradition. REGINA V. BROWNE, 31 C. P. 484.

12. **Habeas Corpus** — EVIDENCE — ASHBURTON TREATY.]—Where the prisoner has been convicted it is not the duty of the Extradition Commissioner to see what evidence was given at the prisoner's trial, but only to see that the crime charged is an extradition crime, that due proof is made of the indictment, and of the record of the court showing the prisoner was convicted after a regular trial on such indictment, and that the evidence proved the identity of the prisoner to whom such indictment refers, and should admit evidence showing that the offence is political or that it is not an extradition crime. IN THE MATTER OF LOUIS LEVI, 1 C. C. C. 74, Q. R. 6, Q. B. 151.

13. **Habeas Corpus** — REVIEW OF EVIDENCE.]—A Judge on habeas corpus does not constitute and form a Court of Appeal on the merits of the case, and he will not question the judgment of the Extradition Commissioner if the case was within his jurisdiction, and if there was any legal and competent evidence to support his decision. EX PARTE SEITZ, 3 C. C. C. 54, Q. R. 8. Q. B. 345.

14. **Indictment not Admissible as Evidence.**]—An indictment is not admissible as evidence to warrant commitment for surrender in extradition proceedings, as such indictment does not amount to more than hearsay evidence. EX PARTE FEINBERG, 4 C. C. C. 270.

15. **Information and Belief.**]—Where the facts in evidence, though sufficient to warrant extradition if deposed to by witnesses who could really testify to their occurrence, were sworn to from information only, the prisoner was discharged. IN RE PARKER, 9 P. R. 332.

16. **Larceny** — CERTIFYING FOREIGN INFORMATION — FOREIGN DEPOSITIONS — ADMISSIBILITY OF CONFESSION.]—In the proceedings in extradition there was submitted a copy of the information against the accused, laid by the States Attorney of Edmund's county, South Dakota, and it purported to be certified by the clerk of the circuit court of said county, under the seal of the court; the original deposition of the county treasurer purporting to have been sworn before a notary public, under official seal; a deposition of the State Attorney sworn before a notary public, under his official seal, authenticating the deposition of the treasurer; these were certified to by the Governor of the State, and countersigned by the Secretary of the State, attached to the last mentioned certificate was a certificate of the Secretary of the State of the United States under his seal, verifying the State seal, which in turn was verified by the certificate of the Secretary of the British Embassy at Washington :—Held, 1. That the documents were properly received in evidence as being duly authenticated within the meaning of sec. 10 of R. S. C., 1886, c. 142. That the clerk of the district court who certified to the copy of the information, was an official of the United States within the meaning of the statute; that the States Attorney was also an officer of the United States within the meaning of the Act. 2. That the offence of grand larceny is larceny within the meaning of the statutes. 3. Where evidence of a confession is given, the evidence will not be rendered inadmissible because the witness was not asked if any threat or inducement was held out, or was not affirmatively shown that it was voluntarily given. RE LEWIS, 9 C. C. C. 233.

17. **Murder.**]—Upon an application to the county Judge of Kent for extradition of the defendant, who was under indictment in the state of New York for murder, the coroner who had held the inquest there proved by oral testimony before the county Judge here, the original depositions taken on oath before him, and also copies of the depositions certified by him

to be true copies :—Held, that under s. 14 of the Imperial Extradition Act of 1870, the original depositions were properly received, as the power given therein to use the original depositions is not qualified by 31 Vict. c. 94, s. 2 (D); and that the evidence disclosed therein was sufficient to warrant the extradition of the prisoner as an accessory before the fact :—Held, also, that the foreign indictment was not admissible as evidence against the accused. It was shewn that the only warrant issued in this case was the warrant issued by the district attorney, after the grand jury had found a true bill for murder, which did not profess to be issued upon the depositions, nor was it proved upon what evidence the bill was found :—Semble, that the right given by s. 14 above referred to, to use copies of depositions is confined by the effect of s. 2 of 31 Vict. c. 94, to those cases in which a warrant has been issued in the United States upon the depositions. S. C. 6, A. R. 386.

18. **Preliminary Proceedings** — DEPOSITIONS.]—Where a prisoner in custody under the Ashburton Treaty obtained a habeas corpus and certiorari for his discharge, it was held that the argument as to the regularity or irregularity of the initiatory proceedings, such as information, warrant, &c., was a matter of no consequence, the material question being whether, being in custody, there was a sufficient case made out to justify the commitment for the crime charged. It was held, that certified copies of depositions sworn in the United States after proceedings had been initiated in Canada, and after the arrest in Canada, were admissible evidence before the police magistrate. EX PARTE MARTIN, 4 C. L. J. 198.

19. **Review of Sufficiency of Evidence on Habeas Corpus Application.**]—On habeas corpus proceedings the court will not enquire into the weight or sufficiency of the evidence taken before the extradition commissioner, and though the commissioner reserved the right of counsel to apply on the habeas corpus application for the admission of certain evidence, the court will not consider any evidence except that on which the prisoner stands committed. RE COHEN, 8 C. C. C. 25 8 O. L. R. 143.

20. **Sufficiency of Evidence in Proceedings for.**]—A commissioner under the Extradition Act has to decide whether the evidence is sufficient to justify a commitment and not conviction. EX PARTE ISAAC FEINBERG, 4 C. C. C. 270.

21. **Sufficiency of Evidence Before Commissioner** — INTERFERENCE WITH HIS DECISION.]—The court may revise the commissioner's decision as to whether there is any legal or competent evidence tending to prove the commission of the crime but it will not revise the commissioner's evidence as to the sufficiency of the evidence. RE HORACE D. GATES, 8 C. C. C. 249.

VII. WARRANT OF COMMITMENT.

1. **Form of** — VARIOUS OFFENCES IN THE ONE COMMITMENT.]—1. It is not essential to the validity of a warrant of commitment for extradition, that the commissioner should specify the reason or reasons why he has determined that the prisoner should be extradited, or state that on the evidence a prima facie case has been made out. It is sufficient if the committal is in the terms of the form prescribed by the statute. 2. Several cognate offences emanating from the same transaction may be included in the one commitment. 3. An additional offence charged by a supplementary information laid pending the enquiry as to previous offences charged, may be included in the commitment for extradition, where on the evidence adduced a prima facie case is proven, emanating from and cognate to the same transaction. 4. In considering extradition crimes the practice is not to insist on an absolute identity between the offence as described in the laws in force in the demanding and surrendering countries, provided it appears clear that the facts alleged and proved as the ground for extradition contain the essential elements of a like extraditable crime in each country. RE GAYNOR & GREENE, (No. 11) 10 C. C. C. 154.

2. **General Rule of Procedure.**]—The authority of the magistrate need not be shewn on the face of a warrant of commitment, and where the crime has been committed in a foreign country and the com-

mitting magistrate has (as in this case), jurisdiction in every county in Ontario, the warrant is not bad, though dated at Toronto, the county mentioned in the margin being York, but directed to the constables, &c., of the county of Essex, and being signed by the police magistrate as such for the county of Essex. REGINA v. RENO, 4 P. R. 281.

Under 31 Vict. c. 94 (D), all that the committing magistrate or the court or a Judge has to do is to determine whether the evidence of criminality would, according to the laws of Ontario, justify the apprehension and committal for trial of the accused if the crime had been committed therein. IB.

Such decision, if adverse to the prisoner, does not conclude him; as the question of extradition or discharge exclusively rests with the Governor General. IB.

Evidence offered to a magistrate by a prisoner on an examination of this kind, by way of answer to a strong prima facie case, may perhaps properly be taken, but would not justify the magistrate in discharging the prisoner. And, quære, whether it was not the intention of 31 Vict. to transfer to the Governor exclusively the consideration of all the evidence that he might determine whether the prisoner should be delivered up. IB.

Under the circumstances of this case, it was held that there was sufficient prima facie evidence of the criminality of the prisoners to warrant a refusal to discharge them, and that there was evidence to go to a jury to lead to the conclusion that the intent of the prisoner was, at the time of shooting, to commit a murder.

3. **Perjury** — WARRANT OF COMMITTAL — FOREIGN LAW — ADMINISTERING OF OATH — FALSE AFFIDAVIT.]—1. Where the form of the warrant of committal is in accord with the form prescribed by the statute, it does not require to show on its face that the statutory prerequisites of the commissioner's jurisdiction have been complied with. 2. On an application for habeas corpus the justice does not sit on appeal from the decision of the commissioner; he can only deal with the jurisdiction of the latter to make the order made by him. 3. Perjury is an extradition crime within the treaty and the statute. 4. Where the deponent in swearing an affidavit himself repeated the obligatory language in the presence of the notary, it is a sufficiently valid administration of the oath on which to base a charge of perjury. 5. There is one way and only one way, of proving foreign law, in a court in Canada, and that is by evidence of experts, who give their opinion with regard to the foreign law as a question of fact. 6. In the determination of the question of sufficiency of evidence of criminality which would cause the accused to be committed for trial in Canada if the acts complained of had been performed in Canada, the definition of the imputed crime in accordance with the laws of Canada is to be taken, and applied to the acts of the accused in the circumstances in which they took place; if in those acts the definition of the crime is satisfied, then the statutory and treaty requisites are complied with. If a conception of the accused pursuing the same conduct in Canada is to be the test, then along with that, regard must be had to the environment when the act was done, which must include so far as is relevant, the local institutions of the demanding country; the laws affecting the legal powers and rights, and fixing the legal character of the acts of the persons concerned, always excepting, the law supplying the definition of the crime charged. 7. Where the extradition commissioner has found on the evidence of experts in the foreign law, that an extradition crime has been charged which is an extradition crime in the demanding country, a Judge on habeas corpus proceedings will not interfere with that finding where there was evidence on which the commissioner might reasonably come to the conclusion which he reached, inasmuch as the Judge on the habeas corpus application does not sit as a Court of Appeal, but considers merely the question whether the commissioner had jurisdiction to do what he has done. 8. Where the charge is one of perjury, in considering the validity of the oath administered, it is sufficient if the real essence of the oath is preserved, and the formalities required by the laws of the demanding country satisfied; no mere deviation from strict ceremonial, according to the practice in Canada, would be sufficient to prevent the application of the treaty and statute; the substance of the matter is the taking of an oath in a foreign jurisdiction, in accordance with and after the manner which by law is sanctioned in that jurisdiction. RE COLLINS, (No. 3) 10 C. C. C. 80.

VIII. Miscellaneous.

1. **Acts in Force.**]—Held, that 40 Vict. c. 25 (D) is not in force, but that the law and practice relating to the extradition of fugitive criminals between the United States and Canada, is to be found in the Ashburton treaty, Art. X., 31 Vict. c. 94 (D.), 33 Vict. c. 25 (D.), and the Imp. Acts, 33 & 34 Vict. c. 52, and 36 & 37 Vict. c. 60, re Williams & P. R. 275, approved of. Regina v. Browne, 31 C. P. 484, 6, A. R. 386.

2. **Arrest Without Warrant** — Illegality — Detention of Prisoner.]—The arrest of the accused without the issue of a warrant and before a sworn complaint in extradition had been lodged is illegal and void, and where a party has been arrested illegally, he, while still under such illegal arrest cannot be held on a legal or valid warrant; before he can be legally arrested on a new charge he must first be restored to the condition he was in at the time of his arrest, or at least to his liberty. Nor can a warrant to arrest be served on a prisoner while habeas corpus proceedings are pending. Ex Parte Cohen, 8 C. C. C. 312.

3. **Extradition Act** — Appointment of Commissioners — Intra Vires Dominion Parliament.]—The Extradition Act R. S. C., 1886, c. 142, sec. 5, is intra vires of Dominion Parliament and being a federal forum, it is not an inferior court within C. P., Art. 50, and a writ of prohibition will not lie to prevent the commissioner from proceeding with an extradition matter. The Act 1889 does not repeal that of 1886, R. S. C. c. 142; it applies only to fugitives from such countries as have no extradition treaties with Great Britain. Re Gaynor & Greene, (No. 6) 9 C. C. C. 486.

4. **Extradition Act** — Constitutionality of — De Facto Judicial Officer — Prohibition.]—Sec. 5 of the Extradition Act is intra vires of the Parliament of Canada and does not infringe upon the rights of the provinces in respect of the constitution maintainance and organization of provincial courts conferred by s.-s. 14 of sec. 92 of the B. N. A. Act. Prohibition will not lie to determine the title of a de facto judicial officer (such as an extradition commissioner) since its only function is to prevent a usurpation of jurisdiction by a subordinate court. The appropriate remedy is quo warranto. Ex Parte Gaynor & Greene, 9 C. C. C. 240.

5. **Extradition Convention** — 'Other Property' — Merchandise.] — The words 'other property' contained in the Extradition Convention of 1890, with the United States, the words being 'money' valuable security or other property, must be restricted to things of the same type as money, and would not include merchandise. Re Cohen, 8 C. C. C. 251, 8 O. L. R. 143.

6. **Extradition** — Fugitive Offenders Act — Forgery — Theft — Evidence — Prima Facie Case — Presumption — Identification — Judicial Notice of Statute.]—Re Rowe, 2 O. W. R. 962.

7. **Extradition** — Parent Stealing His Child — Foreign Law — Divorce Collusion — Contempt of Court.]—Re Watts, 1 O. W. R. 129, 133, 3 O. L. R. 279, 368.

8. **General Rule.**]—Judges are bound to construe a treaty in a liberal and just spirit, not labouring with legal astuteness to find flaws or doubtful meanings in its words or in those of the legal forms required for carrying it into effect. Re Burley, 1 C. L. J. 34.

9. **General Rule.**]—Remarks on the propriety of giving a liberal interpretation to the extradition treaty, and the inadequacy of its provisions to meet the class of felonies of most common occurrence in both countries. Regina v. Morton, 19 C. P. 9.

10. **United States and Canada.**]—Held, that the Ashburton treaty contains the whole of the law of surrender as between Canada and the United States, 3 Will. IV. c. 6, being superceded by it, and the Imperial Act 6 & 7 Vict. c. 76, and the provincial statute 12 Vict. c. with whom no treaty or conventional arrangement existed, 3 Will. IV. c. 6, is still in force. Regina v. Tubbee, 1 P. R. 98.

Quære, how far the United States, Lower Canada or England, would respect 3 Will. IV. c. 6, if a fugitive surrendered by Upper Canada to a foreign power were taken through these countries. Ib.

Held, that though the surrender must

be by the executive government, yet a party committed under a magistrate's warrant may apply for a habeas corpus, and the court or Judge may determine whether the case be within the treaty. IB.

11. **United States and Canada.**]—The only existing law as to the extradition of criminals between the United States and Canada is the Imperial Act of 1870 [33 & 34 Vict. c. 25 (D.)]. The Canadian Extradition Act of 1877, 40 Vict. c. 25 (D.) does not apply to criminals from the United States, as the operation of the Imperial Act of 1870 has not "ceased or been suspended within Canada". Proceedings taken for the extradition of the prisoner under 40 Vict. c. 25 (D.), and a warrant committing him under that Act, were therefore set aside, and the prisoner discharged. IN RE WILLIAMS, 7 P. R. 275.

FALSE IMPRISONMENT.

1. **Post Letter** — ARREST OF CARRIER — RIGHT TO SEARCH — REASONABLE CAUSE.] —The plaintiff was suspected on reasonable grounds of stealing a post letter, defendant as a detective, acting under instructions of the postal officials, made a search of the plaintiff's person, but failed to discover the letter. The search of the plaintiff's clothing was made also at his, the plaintiff's, suggestion and invitation. Plaintiff was immediately released :—Held, that an action for damages for false arrest would not lie against the officer where his suspicions were based on reasonable grounds. MAYER v. VAUGHAN, 6 C. C. C. 68, Q. R. 11, K. B. 340.

2. **False Imprisonment** — JUSTICE ISSUING WARRANT WITHOUT GROUNDS — LIABILITY FOR DAMAGES.]—Under the laws of Quebec a justice who does not inquire into the grounds which a complainant has for suspecting the commission of a theft by a person whom the complainant desires arrested in the justice's warrant, renders himself liable in damages to party aggrieved, if the arrest is made without reasonable or probable grounds for suspicion. MURFINA v. SAUVE, 6 C. C. C. 275, Q. R. 19, S. C. 51.

FALSE PRETENCES.

1. **Aiding and Abetting.**]—The indictment charged one B. with obtaining by false pretences, from one J. T., two horses, with intent to defraud, and that the defendant was present aiding and abetting the said B. the misdemeanour aforesaid to commit :—Held, good, defendant being charged as a principal in the second degree. Held, also, that the evidence set out in this case was not sufficient to sustain the charge. REGINA v. CONNOR, 14 C. P. 529.

2. **Altering Order.**] — A municipality having provided some wheat for the poor, the defendant obtained an order for 15 bushels, described as "three of golden drop, three of Fife, nine of milling wheat". Some days after he went back, and represented that this order had been accidentally destroyed, when another was given 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 24 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 wheat by false pretences :—Held, also, that the evidence set out in the case, was sufficient to sustain the conviction. REGINA v. CAMPBELL, 18 U. C. R. 413.

3. **Attempt.**]—Held, that a prisoner indicted for a misdemeanour (in this case it was for false pretences) may on such indictment be convicted of an attempt to commit the offence which is a misdemeanour. REGINA v. GOFF, 9 C. P. 438.

4. **Attorney-General's Fiat.**]—On an indictment, for obtaining money by false pretences, was indorsed : "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 authorised to represent the Crown in all the criminal proceedings during the term. A motion was made to quash the indictment, on the ground, inter alia, that the preliminary formalities required by s. 28 of 32 & 33 Vict. c. 29, had not been observed. The chief justice allowed the case to be 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 & 33 Vict. c. 29, s. 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. ABRAHAMS v. THE QUEEN 6 S. C. R. 10.

5. **Authority of Constable to Arrest Without Warrant on a Telegram.**]—A peace officer is justified in arresting without a warrant on a telegram from another province, a person charged with the offence of obtaining by false pretences, with intent to defraud, goods capable of being stolen. Can. Crim. Code secs. 22 and 552 discussed. The right of an accused person to be brought before a justice by noon of the following day, as provided by sec. 552 (7a) is limited to cases within subsec. 7 only. R. v. CLOUTIER, 2 C. C. C. 43, 12 Man. L. R. 183.

6. **By Conduct** — DEBTOR COLLECTING RENTS AFTER ASSIGNMENT TO CREDITORS — CODE SEC. 358.]—To constitute the offence of obtaining money under false pretences, the false pretence need not be made in writing or in words; it may be made 'otherwise,' as stated in sec. 358 of the Code; and it will suffice if it is signified by the conduct or acts of the accused. Where the accused represented by his conduct, that he was the joint owner of certain property, and as such entitled to collect and receive the rent from the tenant, after he had made an assignment for the benefit of his creditors, and after his authority to collect such rent had elapsed, and knowing at the time that he had no right to receive it, such representation by conduct, constituted a false pretence. The rule with respect to reserving questions of law, is that a question should be reserved if the trial Judge has some doubt in the matter, but that he should refuse to reserve a question where he has no doubt whatever on the subject. The question whether the conduct of an accused person charged with obtaining money under false pretences, does in fact constitute such crime, is not a question of law, but an issue of fact within the province of the jury to decide, and it is therefore the subject of a reserved case. R. v. LETANG, 2 C. C. C. 505.

7. **Contract to Pay Money** — GIVING PROMISSORY NOTE INSTEAD OF MONEY — VALUABLE SECURITY.]—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 favor for the $240. The contract did not provide for the giving of a note, and when the representations were made the giving a note was not mentioned. The prosecutor, however, swore that he gave the note because he had entered into 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 and 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 :—Held, 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.

8. **Evidence — ADMISSIBILITY.**]—On an indictment charging the accused with having obtained goods by false pretences from a company named, with intent to defraud, so soon as it has been proved that he did the act charged, evidence of false representations made to persons other than the president and general manager of such company, on other and distinct occasions, is admissible, to shew that the accused, at the time he made the false representations to the president and general manager of the company, on whose information the prosecution was brought, was pursuing a course of similar acts, and to prove guilty knowledge of the falsity of the pretence charged in the indictment and the intention with which the act charged was done. REX v. KOMIENSKY, Q. R. 12, K. B. 463.

9. **Evidence of Previous Acts to Show Guilt.**]—When the question is whether an act was or was not fraudulent, acts of a similar kind are given in evidence to show intention. REX v. KOMIENSKY, 7 C. C. C. 27, Q. R. 12, K. B. 463.

10. **False Pretence not Actually Made by Accused Himself but in His Presence.**]—A person who does not otherwise make a false representation himself, but who is present when it is made, 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 4 Terr. L. R. 304.

11. **False Representation made to Another in Presence of Accused — RECEIPT OF SHARE OF MONEYS.**]—The accused being present when a false representation was made by another which the accused knew to be false, and he also receiving a part of the money so fraudulently obtained, it was held that he was rightly convicted of procuring money by false pretences. REGINA v. CADDEN, 5 C. C. C. 45, 4 Ter. L. R. 304.

12. **Fraudulent Intent — DEMAND BY THIRD PERSON.**]—A person who does not otherwise make a false representation himself, but who is present when it is made, 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. REGINA v. CADDEN, 20 Occ. N. 185, 4 Terr. L. R. 304.

13. **Fraudulent Post-Office Orders.**] — One D., being post-master at Berlin, transmitted to defendant at T. several post-office orders payable here, which defendant presented and got cashed, but it appeared afterwards that the moneys thus obtained had never been received by D. for defendant, and that frauds to a large extent had been thus committed. Defendant was held properly convicted of having obtained these sums with intent to defraud. And, semble, that defendant might also have been properly convicted under another count of the indictment charging him with having obtained the money by false pretences. REGINA v. DESSAUER, 21 U. C. R. 231.

14. **Fraudulently Procuring Court Cheque.**]—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 indorse 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 be-

cause P. was entitled to the money, and there was no sufficient proof of intent to defraud P. REGINA v. PARKINSON, 41 U. C. R. 545.

15. **Indictment** — FORM — BOARD.] — An indictment that the defendant by false pretences did obtain board of the goods and chattels of the prosecutor :— Held, bad, the term "board" being too general. REGINA v. MCQUARRIE, 22 U. C. R. 600.

16. **Indictment** — VARIANCE.]—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. REGINA v. BRADY, 26 U. C. R. 13.

17. **Indictment** — FORM.]—Held, that the indictment for false pretences in this case was clearly sufficient, as it followed exactly the form sanctioned by 18 Vict. c. 92. REGINA v. DAVIS, 18 U. C. R. 180.

18. **Indictment on Different Charge than that on which Committed** — AMENDMENT — CODE SEC. 723.:—Prisoner was charged before the magistrate with stealing 2,200 bushels of beans, the property of one Stevens, and was committed on that charge. At the assizes an indictment was preferred, not for stealing the beans, but for obtaining from the prosecutor, by false pretences, two cheques, the false pretence being "that there was then a large quantity of beans, to wit, 2,680 bushels, the property of the said Stevens, in the warehouse of the accused". Counsel for the accused moved to quash the indictment at the trial, which motion was refused, and an amendment followed, by striking out the words "a large quantity of beans, to wit" :—Held, on a case reserved, that the indictment for false pretences would lie notwithstanding that the commitment was on a charge of stealing, where, as in this case, the evidence at the preliminary hearing and at the trial, sustained the charge of false pretences that the amendment was properly allowed, since the addition of the words in question merely operated as unnecessarily setting out in what the false pretence consisted, and could not therefore render the indictment liable to be quashed as having preferred contrary to the provisions of sec. 641; that on the question of prejudice, it must be taken that the trial Judge was of the opinion that the defence was not misled or prejudiced by the variance between the evidence given and the charge in the indictment, and the question was therefore not open on the reserved case; that in any event on the material, there was no evidence of prejudice. R. v. PATTERSON, 2 C. C. C. 339, 26 O. R., 656.

19. **Inducing Note to be Signed by False Pretences** —EVIDENCE OF SIMILAR FRAUDS ON OTHERS — 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 showed that on May 4, 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 out 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 the 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, 17 O. R. 463.

20. **Lapse of Time.**]—To sustain a conviction on a charge of obtaining goods or money by false pretences, and there is a period of time intervening between the making of the representation and the

subsequent delivery, the delivery must be directly connected with the representation in reality forming one continuing pretence, whether there is such a connection or not is a question for the jury. The mere fact that the word "owner" followed the signature of the accused to a letter inviting negotiations with the prosecutor to charter a ship for coal in the possession and under the control of the accused, is not in itself sufficient holding out, that the accused is the 'registered owner' thereof. R. v. HARTY, 2 C. C. C. 103, 31 N. S. R. 272.

21. **Larceny.**]—A defendant indicted for a misdemeanour for obtaining money under false pretences, cannot under C. S. C. c. 99, s. 62, be found guilty of larceny. That clause only authorizes a conviction for the misdemeanour though the facts proved amount of larceny. REGINA v. EWING, 21 U. C. R. 523.

Where a defendant on such an indictment had been found guilty of larceny :—Held, that the court had no power under C. S. U. C. c. 112, s. 3, to direct the verdict to be entered as one of "guilty" without the additional words. IB.

22. **Lien Note** — VALUABLE SECURITY — CODE SEC. 360.]—A lien note is a valuable security or other security for money or for payment of money or a "document of title" within the meaning of sec. 360 of the Code. REX v. WAGNER, 6 C. C. C. 116, 5 Ter. L. R. 119.

23. **Mode of Proof Where False Statement is Made to a Bank.**]—Where a false statement is presented to a bank for the purpose of inducing the bank to give a discount or credit, it is not necessary to examine one, of more, or the directors, if it was possible to prove the false pretence, and that the directors relied upon it, by the evidence of the competent witnesses. REGINA v. BOYD, 4 C. C. C. 219.

24. **Money Taken to Change.**]—G., the prisoner, and another, were in a boat and they agreed to take M., the prosecutor, to meet a steamer, G., saying that 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, 26 U. C. R. 312. See REGINA v. CAMPBELL, 18 U. C. R. 413.

25. **Must Relate to Existing Matters.**]—To render a defendant liable, his false representation must have been with regard to a past or existing matter, not to a future undertaking, as that he will pay for goods on a certain day. MOTT v. MILNE, 31 N. S. R. 372.

26. **Note of Third Person Given for Goods.**]—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 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. REGINA v. DAVIS, 18 U. C. R. 180.

27. **Obtaining Goods under False Pretences**—PRETENCES TOO REMOTE—MEANING OF TERM "OWNER" OF A SHIP.]—Case reserved on the conviction of defendant for obtaining goods and money under false pretences, by representing himself to be the owner of a vessel, whereas at the time he had transferred ownership to another person who had again transferred to defendant's wife. The representation to the prosecutor that he was owner was made some three or four months before, and was by appending the style "owner" to his signature to a letter in relation to another matter:—Held, Ritchie and Meagher, J.J., dissenting, that the pretence was too remote to warrant a conviction. And that the term "owner" has no definite meaning in law, and does not mean "registered owner" of a ship. REGINA v. HARTY, 31 N.S.R. 272.

28. **Obtaining Goods Unlawfully** — SALE OF HIRED GOODS — NATURE OF OFFENCE.]—Where the defendant hired a bicycle, of the value of $20, representing that he wished to use it to go to L., for the pur-

pose of visiting his sister, and, instead of returning the bicycle, sold it to C. :—Held, that evidence which shewed these facts was not sufficient to support a conviction for having "unlawfully, and by false pretences, obtained from L. one bicycle, of the value of $20," the prosecutor not having been induced and not intending to part with his right of property in the goods, but merely with the possession of them, and there being no representation as to a present or past matter of fact. REX v. NOWE, 36 N. S. Reps. 531.

29. **Obtaining Money with Intent to Defraud** — FRAUDULENT POST OFFICE ORDERS.]—One D., being postmaster at Berlin, transmitted to defendant at Toronto several post office orders payable there, which defendant presented and got cashed, but it appeared afterwards that the moneys thus obtained had never been received by D. for defendant, and that frauds to a large extent had been thus committed. Defendant having been convicted upon an indictment for obtaining from the Queen these sums, of the moneys and properties of the Queen, with intent to defraud,—Held, that the indictment was good ; that s. 56 of the Post Office Act, C.S.U.C. c. 31, was not applicable to the case ; that the money was properly charged to be the money of the Queen, not of the post master ; and that it was unnecessary to allege an intent to defraud any particular person. REGINA v. DESSAUER, 21 U.C.R. 231.

Remarks as to the extensive nature of the provision on which the indictment was framed, C.S.C. c. 93, s. 73. IB.

30. **Obtaining Payment of Note Previously Sold.**]—The prisoner sold a mare to B., taking his notes for purchase money, one of which was for $25 and a chattel mortgage on a mare as collateral security. After this note had matured he threatened to sue, and B. got one R. to pay the money, the prisoner promising to get the notes from a lawyer's office, where he said they were, and give them up next morning. This note, however, had been sold by the prisoner some time before to another person, who afterwards sued B. upon it, and obtained judgment :—Held, that the prisoner was properly convicted of obtaining the $25 by false pretences. REGINA v. LEE, 23 U. C. R. 340.

31. **Obtaining Property by** — WHETHER NECESSARY TO COMPLETE THE OFFENCE.—The prisoner wrote to the prosecutor to induce him to buy counterfeit bank notes. The prosecutor, in order to entrap the prisoner and bring him to justice, pretended to assent to the scheme, arranged a meeting place of which he informed the police, and had them placed in position to arrest the prisoner at a signal from the prosecutor. At such meeting the prisoner produced a box which he said contained counterfeit bank notes, which he agreed to sell the prosecutor on payment of a sum agreed upon. The prisoner gave a box to the prosecutor which he pretended to be the one containing the notes, who then gave the prisoner $50 and a watch as security for the balance which he had agreed to pay. The prosecutor immediately gave the signal to the police and seized the prisoner and held him until they arrested him, and took the money and watch from him. On examining the box given the prosecutor, it was ascertained that the prisoner had not given him the one containing the notes as he pretended, but a similar one containing waste paper. The box containing the notes was found on the prisoner's person. It was clear and undisputed that the motive of the prosecutor in parting with the possession of the money and watch, as he had done, was to entrap the prisoner. The prisoner was found guilty of obtaining the money and watch of the prosecutor by the false pretence of giving him the counterfeit notes, which he did not give. On a case reserved for the opinion of the court :—Held, by Allen, C. J., and Palmer, J., that in order to complete the crime of obtaining property by false pretences, there must not only be the false pretence but an actual parting and intention to part with the property of the person imposed upon by the pretence; that the prosecutor here never intended to part with his property in the money and watch, and that the conviction should be quashed. They were also of opinion that as the prosecutor only expected to receive from the prisoner counterfeit notes which were of no value, it was extremely doubtful whether he could be said to have been defrauded because he received worthless goods of another kind. Held, by Weldon, Wetmore, King and Fraser, JJ., that the prisoner was rightly found guilty, and that the conviction should be affirmed. REGINA v. COREY, 22 N. B. R. 543.

32. **Obtaining under False Pretences—** SUFFICIENCY OF PROOF.]—The defendant was foreman of works on roads, and certified to the inspector A. that certain persons had worked under him and were entitled to pay. He also produced orders for this pay purporting to be signed by those persons, but which in fact were not genuine. The inspector A. delivered the money to D., his agent, with instructions to pay it to the defendant if satisfied of the genuineness of the orders. On an indictment for obtaining money under false pretences from D., the defendant was found guilty, and a case was reserved for the opinion of the court as to whether, (1) there was evidence of false pretence to D., (2) whether the indictment should have set forth false pretence to A.—Held, the conviction was proper. REGINA v. CAMERON, 23 N.S.R. 150.

33. **Place of Offence.**]—The prisoner, at Seaforth, in the county of Huron, falsely represented to the agent of a sewing machine company that he owned a lot of land, and thus induced the agent to sell machines to him, which were sent to Toronto in the county of York, and delivered to him at Seaforth :—Held, that the offence was complete in Huron, and could not be tried in York. REGINA v. FEITHENHEIMER, 26 C. P. 139.

34. **Promise — Existing Fact.**]—The prisoner, and 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 indorsed on his (D's) note, held by the prisoner. The prisoner several times called at H. & F's, store with the note mentioned, obtained goods, and had the amount indorsed on the note. Afterwards he called without the note and got goods, on his promising to bring the note within a day or two to have the amount indorsed thereon. Prisoner saw D. the day after, and directed him not to pay anything more than the amounts indorsed on the note, and he never afterwards presented the note to have the amount indorsed thereon :—Held, that there was no false representation or pretence of an existing fact, but a mere promise of defendant, which he failed to perform. REGINA v. BERTLES, 13 C. P. 607.

Held, that defendant (who was indicted for false pretences) could not on the indictment and evidence in this case be convicted of larceny under C. S. C. c. 99, s. 62. Quære, as to the meaning of that first clause. IB.

35. **Promise of Intention —** POSSESSION BUT NOT RIGHT OF PROPERTY.]—The promise to return a bicycle rented does not constitute a false pretence, and where the prosecutor was not induced and did not intend to part with his right of property but merely the possession, there is not the offence of obtaining an article by false pretences. REX v. NOWE, 8 C. C. C. 441, 36 N. S. R. 531.

36. **Registration as Physicians.**]—Procuring registration as a physician under 37 Vict. c. 30 (O.), by false or fraudulent representation. REGINA v. COLLEGE OF PHYSICIANS, 44 U. C. R. 146.

37. **Vacant Land Represented as Improved.**]—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. REGINA v. HUPPEL, 21 U. C. R. 281.

38. **Valuable Security.**]—The term "valuable security," used in C. S. C. c. 92, s. 72, means a valuable security to the person who parts with it on 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. REGINA v. BRADY, 26 U. C. R. 13.

FALSE RETURNS.

Provinces — CRIM. CODE SEC. 365-553 (b) — LOCALITY OF CRIME.]—A charge of making and publishing a false statement of the affairs of an incorporated trading company, under Crim. Code sec. 365, may be tried either in the province where the statement was mailed, or in the province where the same was received, and the warrant may under Crim. Code sec. 554 (b) be issued in the province in which the letter was received, and executed in the province in which the letter was mailed. REGINA v. GILLESPIE, 1 C. C. C. 551.

See also CORPORATIONS.

FALSE TRADE DESCRIPTION.

1. **Evidence.**]—The defendants of an advertisement in a newspaper described certain tea sets as "quadruple plate," stating that the regular price thereof was $12.00 a set, Saturday at $6.00." The purchaser of one of the sets, before making his purchase, inquired, and was informed, by the saleswoman of the defendants, that it was one of the tea sets advertised, and that the advertisement could be relied upon :—Held, (1) that the use of the words "quadruple plate" in the advertisement was an application of false trade description, in that the goods could not properly be described as such; (2) that there was evidence to shew that the advertisement applied to these goods. REGINA v. T. EATON CO., 31 O. R. 276.

2. **Procedure.**]—A prosecution under s. 448 of the Criminal Code for selling goods to which a false trade description is applied must be an indictment. Prohibition granted to restrain summary proceedings before a magistrate. REGINA v. T. EATON CO., 29 O. R. 591.

FINES.

1. **Application for Refund of** — CODE SEC. 880.]—In a statute (Code sec. 880) providing that the court may perform a judicial act for the benefit of the party under certain circumstances, the word "may" is imperative and not discretionary. Since the rule is that when a statute confers authority to do a judicial act in a certain case, when the case arrives and its exercise is duly applied for by a party interested and having a right to make the application it becomes imperative on those so authorized to exercise that authority. FENSON v. NEW WESTMINSTER, 5 B. C. R. 624, 2 C. C. C. 52.

2. Conviction imposing fine must adjudge forfeiture, otherwise the omission is fatal and a ground for discharging prisoner on habeas corpus. REGINA v. CROWELL, 2 C. C. C. 34, 18 C. L. T. 29.

3. **Default in Paying** — RELEASE FROM IMPRISONMENT.]—Where an imprisonment is only for the purpose of enforcing payment of a fine there is nothing unlawful or improper in the release of the prisoner n consideration of such cheques, notes or other securities, as the parties interested in the penalty are willing to accept in lieu of cash. PROCTOR v. PARKER, 3 C. C. C. 374, 12 Man. L. R. 528.

4. **Enforcing Payment of Fines.**]—The Crown may issue a fi. fa. for the sale of lands and goods in order to satisfy a fine said to be indebted, and the fine to be a debt. REGINA v. DESJARDINES CANAL CO., 29 U. C. R. 385.

Lands and goods may be included in the same writ, and it may be made returnable before the expiration of twelve months, the Crown not being bound by 43 Geo. III. c. 1. IB.

The court or a Judge may at any time interfere, as exercising the powers of the court of exchequer, to restrain undue harshness or haste in the execution of such writ, although what is complained of may be strictly authorized. IB.

5. **Returns of Fines.**]—Returns of convictions and fines for criminal offences being governed by 32 & 33 Vict. c. 31, s. 76 (D.), and not by the Law Reform Act of 1868, are only required to be made semi-annually to the general sessions of the peace. CLEMANS Q. T. v. BEMER, 7 C. L. J. 126.

Semble, that the right to legislate upon this subject belongs to Parliament, and is not conferred upon the Provincial Legislatures by the B. N. A. Act, 1867. IB.

6. **Statute Imposing Fine and also Imprisonment** — DISCRETION OF COURT IN IMPOSING PENALTY.]—Where a statute prescribes as punishment both a fine and imprisonment, by sec. 932 of the Can. Crim. Code, it is discretionary with the court to inflict either a fine alone or an imprisonment alone or both unless the statute itself declares a contrary intention and expressly overrides the general rule contained in sec. 932 of the Code. REGINA v. ROBIDOUX, 2 C. C. C. 19.

FISHERIES.

1. **Fisheries Act** — DOMINION LICENSE — PROVINCIAL RIGHTS AS TO FORESHORE LIMITS — TRAP NET — R. S. S. 1886, c. 95.]—Defendant was convicted for using a trap net for deep sea fish, contrary to s.-s. 7 of sec. 14 of the Fisheries Act

R. S. C. c. 95:—Held, on appeal—1. On the evidence the trap and leader were not inside the foreshore limits within the proprietary rights of the province, and the Dominion Government therefore had not jurisdiction to issue licenses or collect fees in respect thereof; sec. 14 of c. 95, R. S. C., 1886, is ultra vires. 2. The Federal Government might charge such fees for the purpose of raising general revenue, by enactment of special legislation. 3. The right to regulate fishing within local foreshore limits rests with the Dominion Government. 4. Trap net defined. R. v. CHANDLER, 6 C. C. C. 308.

2. **Fisheries Act** — PROSECUTION FOR PENALTY EXCEEDING $30.]—The defendant was convicted before one justice of the peace on an information under 55 Vict. c. 10, s. 19 (O.), charging him with fishing in a certain stream without the permission of the proprietors, and of taking therefrom forty-five fish:—Held, that the conviction must be quashed, for the penalty fixed for the offence charged exceeded $30, and, therefore, under ss. 25 and 26 of the Act the prosecution should have been before a police magistrate or two or more justices of the peace, or one justice and a fishery overseer. Only one offence is created by s. 19, that of fishing in prohibited waters, and that offence is complete though no fish be taken. REGINA v. PLOWS, 26 O. R. 339.

3. **Right of Appeal** — CRIM. CODE Sec. 879.]—The right of appeal given by s-s. 6, s. 18, of the Fisheries Act (5 R. S. C. c. 9) to the Minister of Marine and Fisheries does not take away the general right of appeal given by Code sec. 879. REX v. TOWNSEND, 5 C. C. C. 143, 35 N. S. R. 401.

4. **Fisheries Act** — TEMPORARILY DOMICILED — FOREIGNERS.]—A foreigner who has not his "sole or principal residence" in Canada for a limited time, is not temporarily domiciled in Canada within the meaning of the Fisheries Act. REX v. TOWNSEND, 5 C. C. C. 143, 35 N. S. R. 401.

5. **Particular Offences**—ILLEGAL FISHING—FISHERIES ACT—EVIDENCE—COMPLAINT — INDEFINITENESS — CONVICTION —DISTRESS—IMPRISONMENT.]—Evidence that a person was seen on the river in a canoe between ten and eleven o'clock at night with the appliances commonly used in illegal salmon fishing, is, in the absence of any explanation of the situation and where the charge is not denied on oath, sufficient to justify a conviction for illegal fishing under the Fisheries Act. A complaint charging the accused with having been engaged in illegal fishing in contravention of the Fisheries Act is too indefinite to support a conviction for illegal fishing under the Act. Imprisonment may be adjudged under the Act for default in payment of a penalty imposed without awarding a distress. REX v. FRASER, Ex. p. DIXON, Ex p. LENNON, 36 N.B. Reps. 109.

FIRE ARMS.

Prisoner Testifying.]—On 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, that 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.

See also ASSAULT.

FORCIBLE ENTRY.

1. **Evidence of Title in Defendant.**]—On an indictment for forcible entry and detainer of land, evidence of title in defendant is not admissible. REGINA v. COKELY, 13 U. C. R. 521.

2. **Inquisition.**]—An inquisition for a forcible entry, taken under 6 Hen. VIII. c. 9, must shew what estate the party expelled had in the premises, or the inquisition will be quashed, and restitution awarded. The inquisition is also bad if it appear to the court that the defendant had no notice, or that any of the jury had not lands or tenements to the value of 40s., or that the party complaining was sworn as a witness. MITCHEL v. THOMPSON, REX v. MCKREAVY, 5 U.C.R. 620, 625.

3. **Probability of Employment of Force** — RESTITUTION.]—Defendants, employees of the Great Western R. W. Co., in obe-

dience to orders from the company, went upon the land in question, then in possession of the Straftord and Huron R. W. 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 discretion of the presiding Judge, which had been properly exercised here. REGINA v. SMITH, 43 U. C. R. 269.

4. **Restitution.**]—The court refused a writ of restitution after a conviction of forcible entry and detainer, where the premises were a Crown reserve, the lease of which had expired. REX v. JACKSON DRA. U. C. R. 50.

5. The defendants applied for a delay in order to give evidence of title, but on the prosecutor consenting to waive restitution in the event of conviction, they were compelled to go to trial, and were convicted. A writ of restitution was afterwards refused; though semble, that it would in any case have been improper to delay the trial for the reason urged. REGINA v. CONNOR, 2 P. R. 139.

Semble, also, that where the prosecutor has been examined as a witness, restitution should not be granted. IB.

6. The defendant having been convicted at the quarter sessions on an indictment for forcible entry, was fined, but 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 it was refused. REGINA v. WIGHTMAN, 29 U. C. R. 211.

7. **Trespass on Lands** — CRIM. Code s. 89.]—A trespasser upon lands in the occupation of another, although he enters in a manner likely to cause a breach of the peace and with force sufficient to overcome resistance, cannot be convicted of a forcible entry under sec. 89 of the Crim. Code, where the entry was made for the sole purpose of seizing and taking goods and there was no intent to take possession of the land or to oust the person in possession or to interfere with his actual occupation of it. Russell on Crimes (4th ed.), vol. 1, p. 427, followed. Section 89 of the Code was not intended to make any change in the former law as to forcible entry or to create any new offence. REGINA v. PIKE, 12 Man. L. R. 314.

8. **Trespass** — INTENT TO TAKE POSSESSION — CODE SEC. 89.]—Forcible entering upon land within the meaning of the Criminal Code sec. 89, is not merely going upon the land or trespassing upon it, but there must accompany the act of going upon the land some intent to take possession of the land itself, and deprive the possessor of it; such an interference with the possession as trespassing upon it for the purpose of taking away chattels is not an "entering" within the Code. R. v. PIKE, 2 C. C. C. 314, 12 Man. L. R. 314.

FORFEITURE.

Of Money Penalty — CONVICTION INVALID FOR OMITTING.]—Upon a summary conviction for an aggravated assault in addition to imprisonment at hard labour, a fine of $5 was imposed "to be paid and applied according to law", it was held that the words of adjudication respecting the money penalty should have been "shall forfeit and pay" and for such omission the prisoner was discharged from custody. REGINA v. BURTRESS, 3 C. C. C. 536, 20 Occ. N. 368.

FORGERY.

1. **Agreement to Sell** — FORM OF INDICTMENT.]—Indictment for offering, &c., the following instrument knowing it to be forged :—"I, J. H., do agree to W. C., of W., the full rite and privilege of all the white oak and elm and hickory lying and standing on lot 26, south part, on the 3rd concession Plymp, for the sum of $30, now paid to H. by C., the receipt whereof is here by me acknowledged." The jury having convicted the prisoner :—Held, upon a case reserved—1. That the instrument forged being set out in haec verba in the indictment, the description of its legal character would be surplusage, and was unnecessary; 2. That under s. 29 C. S. C. c. 99, it is not necessary to allege

an intent to defraud an indictment for forgery; 3. That the averment of the offence being contra forman statuti was immaterial, (the objection being that there was nothing in the indictment, which contained this averment, to shew that the offence was against any statute) 4. 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 Vict. 22 c. 94; and the conviction was sustained. REGINA V. CARSON, 14 C. P. 309.

2. **Alteration of Indorsed Note.**]—A promissory note had been drawn by the prisoner, payable two months after date to the order of one S., and afterwards indorsed by said S., and the prisoner then altered the note from two to three months, and discounted it at bank. It was objected that the forgery or uttering if any, was a forgery of or the uttering of a forged indorsement (the note having been made by himself), and that there was no legal evidence of an intent to defraud :—Held, that the altering the note while in his possession after it was indorsed was a forgery of a note, and not of an indorsement; and that the passing of the note to the third party, who was thereby defrauded, was sufficient evidence of an intent to defraud. REGINA V. CRAIG, 7 C. P. 239.

3. **Assessment Roll.**]—An indictment will not lie for the forging or altering the assessment roll for a township deposited with the clerk. REGINA V. PRESTON, 21 U. C. R. 86.

4. **Bank Note** — ALTERATION OF DOMINION NOTE.]—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, 7 O. R. 228.

5. **Bank Note** — WHAT AMOUNTS TO.]—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. REGINA V. BROWN, 3 All. 13, N. B. R.

6. **Bank Note.**]—A forged paper purporting to be a bank note, is a promissory note within 10 & 11 Vict. c. 9, even though there is no such bank as that named. REGINA V. MCDONALD, 12 U. C. R. 543.

7. **Bank Note** — POSSESSION OF — SEC. 430-480.]—Code sec. 480 (b) comprises the offence of taking possession of a counterfeit token of value; where a document is a forged bank note within the meaning of sec. 430 it may also be a counterfeit token of value. The taking possession of it may have been made punishable under sec. 480 and yet the having of it in possession may also be an offence under sec. 430. R. V. TUTTY, 9 C. C. C. 430.

8. **Alteration of Dominion Note** — 31 VIC., ch. 46 (D.) 32-33 VIC. (D.), CH. 19, SEC. 10.]—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 2, wherever that figure occurred in the margin of the note, was forgery, and that the prisoner was rightly convicted therefor. REGINA V. BAIL, 7 O. R. 228.

9. **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 guily 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. Mc. F. or order and obtained the proceeds, which he appropriated to his own use :—Held, that the cheque, when indorsed, 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., dissenting. The first count of the indictment charged the defendant with uttering a forged cheque :—Held, that the count was not sustained by proof of forgery of the indorsement, 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 :—Held, that it was too late to raise the question, by case reserved for the full court. QUEEN v. CUNNINGHAM, 6 R. & G. 31, 6 C. L. T. 139.

On appeal to the Supreme Court of Canada :—Held, per Fournier, Henry, and Taschereau, JJ., (Ritchie, C. J., and Strong, J., dissenting), that evidence of the uttering of a forged indorsement 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. 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 reserved and the prisoner ordered to be discharged. Per Ritchie, C. J.,—The question raised by the demurrer was not properly before the court on appeal, the court below having been unanimous with respect to it. Per Strong, J.,—The court below rightly held, on the authority of R. v. Faderman, Den. C. C. 572, that the question raised by the demurrer, overruling it at the trial. Moreover there was nothing in the law under which the prisoner was extradited to prevent the court from trying him for any offence for which he was, according to the law of the Dominion, justifiable before it. Appeal allowed. QUEEN v. CUNNINGHAM, 16th March, 1885, Cas. Digest, 107.

10. **Corroboration.**]—The defendant was convicted of uttering, with knowledge that it was a forgery, the indorsement of the name "Taylor Brothers" upon a promissory note, which had been discounted by a bank, but given up and destroyed before maturity, upon security being furnished to the bank. The manager of the bank and the business partner of the defendant gave evidence of the forgery, and the three members of the firm of Taylor Brothers were also called as witnesses, and denied having indorsed the note, or having any knowledge of it :—Held, that the members of the firm of Taylor Brothers were not persons interested or supposed to be interested in respect of the indorsement, within the meaning of R. S. C. c. 174, s. 218, and their evidence therefore was sufficient, to corroborate that of the other witnesses. REGINA v. SELBY, 16 O. R. 255.

11. **Corroboration.**]—Semble, that on the evidence stated in the report, the testimony of the prosecutor, whose name had been forged to a note, was sufficiently corroborated. REGINA v. MCDONALD, 31 U. C. R. 337.

12. 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 & 11 Vict. c. 9, s. 21), not sufficient evidence. REGINA v. GILES, 6 C. P. 84.

13. **Corroboration.**]—On the trial of an indictment for uttering a forged note evidence was given by a person who had no interest therein of the note being forged. The wife of the person on whose behalf the note was received, and who, when receiving it, was in attendance in her husband's shop as his agent, proved the uttering. Per MacMahon, J., the note having proved to be forged by a person having no interest, the question as to corroboration of the wife's evidence on the ground of interest, did not arise under s. 218 of the Criminal Procedure Act, R. S. C. c. 174. Per Rose, J., the wife had no interest in the forged document; her interest, if any, was to prove its genuineness; but in any event there was abundant evidence of corroboration. REGINA v. RHODES, 22 O. R. 480.

14. Where on a charge of forgery, in addition to evidence of one witness that the forged documents were written by accused, it was also proved by the same witness that certain names in a book written by the same hand as the forged documents, were in the handwriting of the accused :—Held, that this was not sufficient corroboration under s. 684 of the Criminal Code, 1892. REGINA v. MCBRIDE, 26 O. R. 639.

15. **Corroboration — CODE SEC. 423-684.**]—It is not a corroboration in a

"material particular..implicating the accused", on a charge of forgery, that the witness who gave evidence as to the alleged forged signatures having been written by the accused, should also give evidence of certain other signatures written in a book, identifying such latter signatures as also having been written by the accused. R. v. McBride, 2 C. C. C. 544-26 O. R. 639.

16. **Corroborative Evidence.**]—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. c. 174, s. 218, and that therefore, his evidence did not require corroboration. The Queen v. Farrell, 1 Terr. L. R. 166.

17. **Definition.**]—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 a forgery. Consequently where a bank clerk made certain 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, 10 Man. L. R.296.

18. **Evidence of Other Forgeries.**]—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, 10 O. R. 557.

19. **Extradition** — Alteration of Accounts — Ashburton Treaty — Embezzlement — Forgery.]—The prisoner was a clerk in the employ of the mayor and common council of the city of Newark, (in the state of New Jersey, U. S. A.), a portion of his duties being to receive payment of taxes payable to the city; and on the 18th of Nevember, 1881, a sum of $562.32, for taxes, etc., due upon certain lands in that city, was paid to him—such sum being included with other taxes in a check of the party assessed for $4,094. The $562.32 was composed of three items : costs $7.70, interest $72.08, and taxes $482.54—each of which required to be entered in a separate column of the cash book belonging to the office of the comptroller. The gross sum, ($562.32), had apparently been entered first in the column headed "Totals", and subsequently in making the separate entries the sum of $482.54 was entered as $282.54, and the figure "3" in the total column substituted; the difference $200, being abstracted by the prisoner from moneys paid to him on that day :—Held, per Spragge, C. J. O., and Galt, J. that this act amounted to the crime of forgery, and, as such, rendered the prisoner liable to extradition. Per Burton and Patterson, JJ. A., that such alteration was not forgery, though the act amounted to one of embezzlement, and therefore that the prisoner was entitled to be discharged, embezzlement not being one of the offences for which a party was at the time liable to be extradited under the Ashburton Treaty. In re Hall, 8 A. R. 31.

20. **Extradition** — Ashburton Treaty — Forgery.]—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 entries of moneys 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 inserted a less sum, with intent to benefit himself by the 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, per Proudfoot, it is not necessary for the purpose 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. S. C., 3 O. R. 331, Ch. D.

21. **Extradition** — FORGERY — EVIDENCE.]—A cargo of oats was received at an elevator for the S. Co., of which the prisoner was a member, and also secretary and financial manager with power to sign notes, etc. On the day of their receipt a clerk of the S. Co., who was authorized so to do, prisoner having nothing to do with the buying and selling of the grain, signed an order for the delivery of 19,886 bushels of oats to a railway company, consigned to the S. Co's. agents in New York, on whom two drafts were drawn by the S. Co., signed by the prisoner, which were accepted and paid. Warehouse receipts transferable by endorsement were given to the S. Co. for these oats, though after the delivery thereof to the railway company, and were allowed to remain with the S. Co., without any demand being made for their cancellation. Subsequently, the prisoner, in the name of the S. Co., discounted two promissory notes at a bank, and endorsed the warehouse receipts as security for the payment thereof, the notes containing a statement that the receipts were pledged as such security with authority to sell, etc., in default of payment :—Held, in extradition proceedings, that the endorsement to the bank of the receipts did not constitute forgery. IN RE SHERMAN, 19 O. R. 315.

22. **Extradition** — EVIDENCE — BILL OF EXCHANGE.]—Where the person in whose name a bill of exchange was drawn was a fictitious person, and the prisoner falsely represented such fictitious person to be a real person in the employment of the person on whom the bill was drawn, and that he had authority to draw upon them for the amount of the bill, and the bill was drawn with intent to defraud, and persons were by these means defrauded, there is evidence that the bills were false documents, and the prisoner had been guilty of forgery for which he could be extradited. RE M. B. LAZIER, 3 C. C. C. 167, 30 O. R. 419, 26 A. R. 260.

23. **Extradition** — FORGERY — REJECTION OF EVIDENCE.]—P. was the superintendent of the Blocksley Almshouse, situated in and supported by the city of Philadelphia, U. S. Parties supplying provisions, etc., for the use of the charity were paid by warrants duly prepared and signed by the proper officers thereof. Three such warrants for the payment of certain persons or firms were in the hands of S., the secretary of the almshouse, to be delivered to them on their respectively signing the stub or counterfoil of the warrants. P., who was well known to the secretary, applied to him for those warrants, stating that he had authority from the several parties to sign for them, which he did accordingly, and W. handed over to him the warrants, which were subsequently cashed at the office of the city treasurer. P. having fled to this province, an application was made for his extradition before the Judge of the county court of Wentworth, when expert evidence was adduced proving that according to the statute law of Pennysluania, as also at common law as there interpreted, these facts constituted the crime of forgery :—Held, on appeal, per Spragge, C. J. O., and Patterson, J. A., (affirming the judgment of the Queen's bench division, 1 O. R. 586), that the act amounted to the crime of forgery, and so rendered P. liable to be extradited. Per Burton, J. A., and Ferguson, J., that in the absence of any suspicion of any complicity of W. in the fraud, the facts would not have made out the crime of forgery; but as the evidence afforded ground to infer that W. and P. were in collusion, and had combined together for the purpose of committing the fraud by means of the false documents, and was therefore

sufficient to warrant the committal of P. for the crime of forgery at common law, the order for his committal for extradition should be affirmed. Per Spragge, C. J. O., the forgery which is the subject of the treaty, cannot be confined to the statutory felony of forgery. Patterson, J. A., remarks upon the general right of a person charged before a magistrate with an indictable offence to call witnesses for his defence and of a person whose extradition is demanded to shew by evidence that what he is charged with is not an extradition crime :—Semble, that the evidence here offered as stated below, was not properly rejected. In re Phipps, 8 A. R. 77.

24. **Extradition** — Forged Document — Code Sec. 419-423.]—1. To support a commitment for extradition on a charge of forgery in regard to certain admission tickets, proper legal evidence of the truth of the charge must be given, and a prima facie case is not shown where neither a genuine or one of the alleged forged tickets is produced or identified or its non-production legally explained. 2. In a prosecution for forgery, the initial step is the production of the forged document, unless it has been lost or destroyed. R. v. Harsha, (No. 1) 10 C. C. C. 433.

25. **Extradition** — Public Book — Evidence — Alteration — Forgery — Extradition Act, 1877, 45 Vic. Ch. 25, D.]—The prisoner, who was collector of the county of Middlesex, in the State of New Jersey, kept a book in which to enter the payment and receipts of all moneys received by him as such collector, and which was the principal book of account kept by him. The book was purchased with the money of the county, and was kept in the collector's office, and was left by him at the close of his term of office; it was by statute open to the inspection of those interested in it, and contained the certificate of the county auditors as to the correctness of the matters therein contained :—Held, that the book was the public property of the county, and not the private property of the prisoner. After the book had been examined by the proper auditors as to the amounts received and paid out by and through the prisoner as such collector, and a certificate of the same made by them, the prisoner, who was a defaulter with intent to cover up his defalcation, altered the book by making certain false entries therein of moneys received and paid out, and changing the additions to correspond. Some of these entries were by the prisoner himself, and others by his clerk under his direction, but the clerk on finding that such entries were false changed them back. —Held, that this constituted forgery at common law, as well as under our statute 32-33 Vict. ch. 19, D. :—Held, also, that under the Extradition Act of 1877, 40 Vict. ch. 25, D., it is essential that the offence charged should be such as if committed here would be an offence against the laws of this country. The offence, however, was also proved to be forgery by the laws of New Jersey. In re Jarrard, 4 O. R. 265.

26. **Extradition** — Uttering Forged Document — Foreign Law — Necessity to Prove.]—A cheque having a fictitious signature, which was cashed by the payee in another bank from that on which it was drawn, and in which a fictitious account had been opened in pursuance of a fraudulent conspiracy between the prisoner and his brother was held to be a false document within sec. 421. of the Crim. Code, as well as at common law; and that the evidence disclosing the crime of uttering such document, justified the committal of the prisoner as having committed an extradition offence. In re Murphy, 2 C. C. C. 562, 26 O. R. 163.

27. **Fictitious Note Found by Prisoner.**] —Defendant was convicted at the quarter sessions on an indictment for uttering a promissory note purporting to be made by one F., for £4 10s., with intent to defraud, knowing it to be forged. It appeared that some boys had been amusing themselves with writing promissory notes and imitatnig 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 draught and fell into 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 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 the defendant

uttered it as true; and that the case should not have been tried at the quarter sessions. REGINA v. DUNLOP, 15 U. C. R. 118.

28. **Forging Endorsee's Name to Promissory Note.. No Maker's Name Thereto at the Time** — 32 & 33 VIC. CH. 19 (D.)] : —W., a division court bailiff, had an execution against the prisoner and H. M., and to settle same they arranged to give a note made by A. M. and endorsed by A.D.M. W. then drew up the note in question, which was payable to the order of A. D. M., and which he handed to the prisoner, who took it away to obtain as he said, A. D. M's. endorsement, returning shortly afterwards with the name A. D. M. endorsed thereon. He then handed the note to A. M. who signed his name as maker, and handed it to W., who took it away with him. The endorsement was a forgery. The prisoner was indicted for forging the endorsement on a promissory note, and convicted :— Held, following Regina v. Butterwick, 2 M. & Rob. 196, Regina v. Mopsey, 11 Cox, 143, and Regina v. Harper, 7 Q. B. D. 78, that the conviction could not be sustained on the indictment as framed. The instrument by reason of the maker's name not being signed to it at the time of the forgery, was not a promissory note; and neither could the conviction be sustained on the count for uttering, as after it was signed by A. M. it was never in the prisoner's possession, but was delivered by A. M. to witness. Per Cameron, C. J., as to the meaning of sec. 45 of 32 & 33 Vic. ch. 19 (D.), that possibly a conviction could be had under it, unless it only extended to perjury by making a copy of some existing document or thing written or printed or otherwise capable of being read, for the purpose of fraud, and not to the forgery of a name on a paper written properly as an original paper, and not as a copy. REGINA v. NCFEE, 13 O. R. 8.

29. **Incomplete Note** — PAYEE'S NAME IN BLANK.]—Where, in an instrument in the form of a promissory note, a blank is left for the payee's name, it is not a complete note so as to support a conviction for the forgery thereof, or for the forgery of an indorsement thereon; nor is it a document, writing, or instrument within ss. 46, 47, or 50 of R. C. S. c. 165. Semble, a conviction might have been sustained on an indictment for forgery at common law. REGINA v. CORMACK, 21 O. R. 213.

30. **Letter of Introduction** — USING TO PREJUDICE — ENGAGEMENT TO MARRY.]— The prisoner had presented a letter of introduction to a young lady in the employment of a company which letter purported to be from the vice-president of the company, and in which letter the prisoner was given a false name. On the faith of this, the young lady allowed accused to pay his addresses to her, and became engaged to marry him, though he had already a wife. It was held that though there was no evidence that the prisoner had written the letter himself he must be taken to have been aware of the intent with which it was drawn, and the letter had been presented to her with the intent that she should believe and act upon it as genuine to her prejudice. RE ABEEL, 8 C. C. C. 189, 7 O. L. R. 327.

31. **Omission of Allegation Charging Knowledge** — SIGNING OF PROMISSORY NOTE BY PROCURATION WITHOUT AUTHORITY.]—In the crime of uttering a forged instrument, the knowledge by the utterer that the instrument uttered was forged and had been made with intent to defraud, is an essential element, and where a count did not allege that the defendants made use of or uttered a promissory note made and signed in the name of another, knowing it to have been made and signed by procuration without lawful authority or excuse, and with intent to defraud, one of the vital elements of forgery has been omitted and the count is therefore null and void. REGINA v. WEIR, 3 C. C. C. 499, Q. R. 9. Q. B. 253.

32. **One of Several Signatures.**]—A joint and several bond was executed by the prisoner under an assumed name for a fraudulent purpose. There was no proof whether the other signatures had been forged or not :—Held, that an indictment that the prisoner had forged the bond was sustained. REGINA v. DEEGAN, 6 Man. L. R. 81.

33. **Order for Payment of Money.**]— "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 an order for the payment of money, not a mere request. REGINA v. TUKE, 17 U. C. R. 296.

34. Mr. McK., Sir.—Would you be good enough as for to let me have the loan of $10 for one week or so, and send it by the bearer immediately, and much oblige your most humble servant. I. Almiras, P. P." :—Held, not an order for the payment of money, but a mere request. REGINA v. REOPELLE, 20 U. C. R. 260.

35. "$3.50. Carick, April 10th, 1863. J. McL., tailor,—Please give Mr. A. S. to the amount of $3.50, and by so doing you will oblige me" :—Held, an order for the payment of money, and not a mere request. REGINA v. STEELE, 13 C. P. 619.

36. 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. REGINA v. PARKER, 15 C. P. 15.

37. **Preliminary Inquiry** — SIGNATURE OF ACCUSED TO STATEMENT — EVIDENCE AT TRIAL — CODE SEC, 591.]—At the preliminary inquiry, the magistrate asked the prisoner the statutory question in reply to which he stated "I have nothing to say" whereon the magistrate asked him to sign the statement. At the trial the Crown tendered the signature as evidence against him. :—Held, that the signature so obtained might be put in evidence. R. v. GOLDEN, 10 C. C. C. 278.

38. **Quarter Sessions.**]—The quarter sessions has no jurisdiction to try the offence of forgery. REGINA v. MCDONALD, 31 U. C. R. 337.

39. **Speedy Trial.**]—A prisoner charged with the crime of forgery cannot be brought up before a Judge of the court of Queen's bench under the Speedy Trials Act. REGINA v. SCOTT, 3 Man. L. R. 448.

40. **Telegram.**]—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. indorsed a draft for $85 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 C. P. 440.

41. **Trade Mark Evidence** — CODE 448.]—In order to convict under Code sec. 448 it is not necessary to prove the resemblance to trade mark forged is such as would deceive persons who would see the two marks placed side by side, and it is also not necessary to prove any person had been actually deceived. REGINA v. AUTHIER, 1 C. C. C. 68.

42. **Uttering Forged Notes.**]—The defendants laid an information charging that the plaintiff "came to my house and sold me a promissory note for the amount of ninety dollars, purporting to be made against J. M. in favour of T. A., and I find out the said note to be a forgery." Upon this a warrant was issued reciting the offence in like terms. The plaintiff was tried for forging and uttering the note, and was acquitted :—Held, that the information sufficiently imported that the plaintiff had uttered the forged note, knowing it to be forged, to give the magistrate jurisdiction, and therefore the warrant was not void, and an action of trespass was not maintainable against the defendant, even upon evidence of his interference with the arrest. Semble, that if the offence were not sufficiently laid in the information to give the magistrate jurisdiction, and the warrant were void, an action for malicious prosecution would nevertheless lie. ANDERSON v. WILSON, 25 O. R. 91.

FOREIGN AGGRESSION.

1. **Acquittal as Foreign Citizen** — SUBSEQUENT PROSECUTION AS BRITISH SUBJECT.]—The prisoner being indicted under C. S. U. C. c. 98, and charged as a citizen of the United States, was acquitted on proving himself to be a British subject. He was then indicted as a subject of Her Majesty, and pleaded autrefois acquit :—Held, that the plea was not proved, for that by the statute the offence in the case of a foreigner and a subject is sub-

stantially different, the evidence, irrespective of national status, which would convict a foreigner, being sufficient as against a subject; and the prisoner, therefore was not in legal peril on the first indictment. REGINA v. McGRATH, 26 U. C. R. 385.

2. **Proof of Citizenship** — ADMISSIONS.]—The prisoner, having been indicted under C. S. U. C. c. 98 (3 Vict. c. 12), as a citizen of the United States, 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 shewn 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 declaration of the country to which he belonged :—Held, also, that the evidence, set out in the report, was sufficient to prove the offence charged. The Imperial statute 11 & 12 Vict. c. 12, does not override 3 Vict. c. 12, of this Province, for the latter is re-enacted by the consolidation of the statutes, which took place in 1859. REGINA v. SLAVIN, 17 C. P. 205.

3. **Proof of Citizenship** — CARRYING ARMS.]—The prisoner was convicted under C. S. U. C. c. 98, containing three counts, each charging him as a citizen of the United States. The first count alleged that he entered Upper Canada with intent to levy war against Her Majesty; the second that he was in arms within Upper Canada, with the same intent; the third, that he committed an act of hostility therein, by assaulting certain of Her Majesty's subjects, with the same intent. The prisoner's own statement, on which the Crown rested was that he was born in Ireland, and was a citizen of the United States. It was objected that the duty of allegiance attaching from his birth continued, and he therefore was not shewn to be a citizen of the United States but, held, that though his duty as a subject remained, he might become liable as a citizen of the United States by being naturalized, of which his own declaration was evidence :—Held, also, upon the testimony set out in the case, that there was evidence against the prisoner of the acts charged :—Held, also, that even if he carried no arms, on which the evidence was not uniform, yet being joined with and part of an armed body which had entered Upper Canada from the United States, and attacked the Canadian volunteers, he would be guilty of their acts of hostility and of their intent; and that if he was there to sanction with his presence as a clergyman what the rest were doing, he was in arms as much as those who were actually armed. REGINA v. McMAHON 28, U. C. R. 195.

4. In this case, the charge being the same as in the last, it was shewn that the prisoner had declared himself to be an American citizen since his arrest, but a witness was called on his behalf who proved that he was born within the Queens' allegiance :—Held, that the Crown might waive the right of allegiance, and try him as an American citizen, which he claimed to be. The fact of the invaders coming from the United States, would be prima facie evidence of their being citizens or subjects thereof. The prisoner asserted that he came over with the invaders as reporter only; but, held, that this clearly could form no defence, for the presence of any one encouraging the unlawful design in any character, would make him a sharer in the guilt. REGINA v. LYNCH, 26 U. C. R. 208.

FOREIGN COMMISSION

See EVIDENCE.

FOREIGN ENLISTMENT.

1. A warrant of commitment under the Foreign Enlistment Act, 59 Geo. III. c. 69, s. 4, reciting that T. K. C. "was this day charged (not saying upon oath) before us," and without shewing any examination by the magistrates, upon oath or otherwise, into the nature of the offence, and commanding the constables or peace officers of the county of Welland to take the said T. K. C. into custody :—Held, sufficient. IN RE CLARK, 10 L. J. 331.

A warrant of commitment under the statute, committing the prisoner until "discharged by due course of law,"

sufficiently complies with the statute, which provides for a committal until delivered by due course of law. IB.

2. A commitment under 29 Vict. c. 2, s. 1, stating the offence "for that he on, &c., at, &c., did attempt to procure A. B. to serve in a warlike or military operation in the service of the government of the United States of America," omitting the words, "as an officer, soldier, or sailor," &c.:—Held, bad. IN RE BRIGHT, 1 C. L. J. 240.

Held, that a judgment for too little is as bad as a judgment for too much, and so a condemnation to pay $100 and costs, when the statute creating the offence imposes a penalty of $200 and costs, is bad. IB.

Held, that a commitment on a judgment for a penalty and costs, not stating in the body of the commitment or a recital in it the amount of costs, is bad. IB.

Quære, is the jurisdiction of the officers named in 28 Vict. c. 2, a general or a local one. IB.

3. Held, 1. That to charge a prisoner in a warrant of commitment issued under 29 Geo. III. c. 69, with attempting or endeavouring to hire, retain, engage, or prevail on to enlist, a soldier in the land or sea service, for or under or in aid of "Abraham Lincoln, President of the United States of America, and in the service of the Federal States of America," is sufficiently certain; 2. that the foreign power was sufficiently defined in the warrant, and one whose existence the court is bound judicially to notice, viz.: "The President of the United States of America"—the words relating to the Federal States being rejected as surplusage; 3. That in such a warrant it is unnecessary to allege that the accused is a British subject, the law presuming him to be such till the contrary appears; 4. That it was unnecessary in the warrant to negative a license from Her Majesty to do the act or acts complained of; 5. That the direction to the gaoler to keep the prisoner in the common gaol "until he shall thence be discharged by due course of law, or good and sufficient securities be received for his appearance," &c., was sufficient, the latter words being read as surplusage; 6. That "I," in the text of the warrant, might be read as "I and I", so as to read "Given under my and my" hand and seal, &c., it being presumed that both magistrates used one and the same seal. IN RE SMITH, 10 L. J. 247.

4. Held, 1. That a warrant of commitment on a conviction had before a police magistrate for the town of Chatham, in Upper Canada, under 28 Vict. c. 2, averring that on a day named, "at the town of Chatham, in the said county, he the said A. S. did attempt to procure A. B. to enlist to serve as a soldier in the army of the United States of America, contrary to the statute of Canada in such case made and provided"; and then proceeding: "And whereas the said A. S. was duly convicted of the said offence before me the said police magistrate, and condemned," &c., sufficiently shewed jurisdiction. IN RE SMITH, 1 C. L. J. 241.

2. That the direction to take the prisoner "to the common gaol at Chatham," the warrant being addressed "to the constables, etc., in the county of Kent, and to the keeper of the common gaol at Chatham, in the said county," was sufficient. IB.

3. That the warrant as above set out sufficiently contained an adjudication as to the offence, though by way of recital. IB.

4. That the words "to enlist to serve" do not shew a double offence, so as to make a warrant of commitment bad on that ground. IB.

5. That the offence created by the statute was sufficiently described in the warrant as above set out. IB.

6. That the warrant was not bad a to duration or nature of imprisonment. IB.

7. That the amount of costs was sufficiently fixed in the warrant of commitment. IB.

8. That there is power to commit for non-payment of costs. IB.

9. That the statute does not require both imprisonment and money penalty to be awarded, but that there may be both or either. IB.

5. A warrant of commitment reciting that F. M. was charged on the oath of

J. W. "for that he F. M. was this day charged with enlisting men for the United States army, offering them $350 each as bounty," without charging any offence with certainty, and without stating that the men enlisted were subjects of Her Majesty, and without shewing that J. W. was unauthorized by license of Her Majesty to enlist :—Held, bad. IN RE MARTIN, 3 P. R. 298.

6. The Imperial statute, 59 Geo. III. c. 69, for procuring and endeavouring to procure enlistments in this country for the army of the United States :—Held to be in force in this Province; and a conviction under it sustained. REGINA v. SCHRAM, REGINA v. ANDERSON, 14 C. P. 318.

FORTUNE TELLING.

1. **Criminal Code S. 396.**]—Deception is an essential element of the offence of "undertaking to tell fortunes" under s. 396 of the Criminal Code; and to render a person liable to conviction for that offence there must be evidence upon which it may be reasonably found that the person charged was, in so undertaking, asserting or representing, with the intention that such 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. In this case the evidence set out in the report was held to be sufficient. REX v. MARCOTT, 21 Occ. N. 431, 2 O. L. R. 105.

2. **Deception** — ESSENTIAL ELEMENT IN OFFENCE.]—Fraud, deception, or false pretence of some kind is an essential element of the offence of undertaking to tell fortunes under sec. 396 of the Code, and where a person is charged with such offence there must be evidence from which the jury may reasonably find that such person in so undertaking was asserting or representing, with the intention that such 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. REX v. MARCOTT, 4 C. C. C. 437, 2 O. L. R. 105.

3. **Imperial Act** — DECOY.]—The stasute 9 Geo. II. c. 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, 20 O. R. 306.

4. **Palmistry** — INTENTION TO DECEIVE.—It is not an undertaking to tell fortunes as contemplated by sec. 396 of the Criminal Code, where such individual applying was asked to sign a contract, wherein it was stated that any predictions made were made according to the rules laid down in text books on Palmistry and Clairvoyance and that any intention to deceive was expressly disavowed. R. v. CHILCOTT, 6 C. C. C. 27.

FRAUD.

1. **Fraudulent Appropriation** — PLACE.]—The prisoner received from the prosecutor, in the county of Westmoreland, a quantity of boots and shoes to be sold on commission; he took them to the county of Kent, where he resided, and then to the county of Gloucester, where he sold them, and fraudulently appropriated the money to his own use. On an indictment for larceny in the county of Kent, under the Act 27 Vict. c. 6, s. 1, which makes the bailee of a chattel, who fraudulently converts it, guilty of larceny, the jury were unable to agree whether the prisoner fraudulently intended to appropriate the property in the county of Kent, or not until he had sold it in the county of Gloucester :—Held, that he could not be convicted on the indictment. REGINA v. CORMIER, Mich. T., 1865.

2. **Fraudulent Packing** — CONVICTION FOR — FRUIT MARKS ACT — "FACED OR SHEWN SURFACE".]—The mere having in possession for sale packages of fruit fraudulently packed within the meaning of s. 7 of the Fruit Marks Act, 1901, 1 Edw. VII. c. 27 (D.), is an offence thereunder, though no one is imposed on thereby nor any fraud intended. Semble, that the "faced or shewn surface," within the meaning of the section, is not limited to the branded end of the package. REX v. JAMES, 1 O. W. R. 502 22 Occ. N. 369, 4 O. L. R. 537.

3. **Fraudulent Removal and Concealment of Goods** — INDICTMENT — DATE OF OFFENCE — EVIDENCE OF SIMILAR ACTS — JUDGE'S CHARGE.]—The accused were convicted by the jury at the trial on a count for concealing certain household goods fur the purpose of defrauding the insurance company by which they had been insured, by representing that they had been destroyed by fire, and collecting the insurance money upon them, also on a count which alleged a removal of the goods on or about the 11th September, 1900, for a like fraudulent purpose. Both counts were framed under s. 354 of the Criminal Code, 1892. Evidence was given at the trial shewing the removal of some of the goods in question on the 13th August, 1900, and of others on the 11th September, and in his charge to the jury the trial Judge did not distinguish between the goods removed on 13th August, and those removed on 11th September, but left the case to them in such a way that they could convict on both counts or on either of them as to both sets of goods. In stating a case, the Judge certified that, in his opinion, the evidence of the removal of goods on the 13th August materially influenced the verdict of the jury :—Held, that the conviction of the accused on the count for concealment was right and should be affirmed, but that, although the evidence of the removal in August was probably admissible for the purpose of shewing a criminal intent in the September removal, yet the conviction for the removal should be set aside, on the ground of misdirection of the Judge in telling the jury that they could convict for the removal in August, as the trial might not have been a fair one. REX v. HURST, 22 Occ. N. 68, 13 Man. L. R. 584.

4. **Fraudulent Removal of Goods by Tenant** — DEFENDANT COMPELLED TO TESTIFY.]—The fraudulent removal of goods, under 11 Geo. II. c. 19, s. 4, is a crime, and a conviction therefor was consequently quashed with costs against the landlord, because the defendant had been compelled to give evidence on the prosecution. REGINA v. LACKIE, 7 O. R. 431.

A tenant is not liable to prosecution under 11 Geo. II. c. 19, for the fraudulent and clandestine removal of goods from the demised premises, unless the goods are his own property, nor can goods which are not the tenant's property be distrained off the premises. MARTIN v. HUTCHINSON, 21 O. R. 388.

5. **Fraudulent Sale** — FRAUDULENT CONVERSION — INDICTMENT.]—The defendant was indicted for theft. The indictment set out that, being intrusted by E. R. H. with the power of attorney, he did fraudulently sell certain bank shares belonging to said E. R. H., and did fraudulently convert the proceeds of the sale to a purpose other than that for which he was intrusted with the power of attorney. After the conviction the defendant moved in arrest of judgment because it was not stated in the indictment that the power of attorney was for the sale etc., of any property, real or personal, as provided by Art. 309, Criminal Code. The Judge reserved the question for the decision of the Court of Appeal :—Held, 1. That the indictment was sufficient, it not being necessary to describe the whole power of attorney; and, further, the alleged omission was only a part omission, and any defect resulting therefrom was cured by verdict. 2. The fraudulent sale and the fraudulent conversion did not constitute two offences but one specific offence, viz., that of theft. REGINA v. FULTON, Q. R. 10, Q. B.

6. **Fraudulent Transfer to Defeat Creditors.**]—Upon an indictment under 22 Vict. c. 96, for making an assignment of personal property to defraud creditors :—Held, that a money bond for the conveyance of land is personalty seizable on an execution under 13 & 14 Vict. c. 53, and 20 Vict. c. 57; and, further, that a transfer made to a creditor, who accepted the same in full satisfaction and discharge of his debt, did not render the assignor less liable under the indictment. REGINA v. POTTER, 10 C. P. 39.

7. An action by the party aggrieved to recover the moiety of the penalty imposed by s. 3 of 13 Eliz. c. 5, may be joined with an action to set aside a fraudulent transfer of certain promissory notes. Bills and notes are, by virtue of the legislation passed since 13 Eliz., goods and chattels within that Act. Section 29 of R. S. C. c. 173 applies only to the concluding part of said s. 3, namely, that relating to imprisonment and conviction, &c. MILLAR v. MCTAGGART, 20 O. R. 617.

8. Under s. 28 of R. S. C. c. 173, everyone who makes or causes to be made amongst other things, any assignment, sale, etc., of any of his goods and chattels, with intent to defraud his creditors, or any of them, is guilty of a misdemeanour :—Held, it is not essential, under the Act, that the debt of the creditor should at the time of the sale, &c., be acutally due. REGINA V. HENRY, 21 O. R. 113.

9. **Receiving Money on Terms.**]—Section 308 of the Criminal Code does not mean "terms imposed by the person paying the money," but "terms on which the defendant when he receives it, holds it." REGINA V. UNGER, 14 C. L. T. Occ. N. 294.

FRONTIER.

Restoration of Property.]—Under s. 11 of 28 Vict. c. 1, for preventing outrages on the frontier, the court can only order restoration of property seized when it appears that the seizure was not authorized by the Act; and in this case, on the facts stated, they refused to interfere. IN RE PROPELLER "GEORGIAN," 25 U. C. R. 319.

FUGITIVE OFFENDERS' ACT.

1. **Habeas Corpus** — PRESUMPTION THAT PRISONER COMMITTED OFFENCE.] — It being proven that the prisoner was the secretary of a company and had absconded, that warrants for dividends could be signed by the prisoner alone, and that cheques for the company which should have been paid to the bank, were deposited by the prisoner to the credit of a dividend account, and a dividend warrant drawn on the account, and the warrant with a forged indorsement deposited to the credit of the prisoner, it was held that a prima facie case of stealing and forgery had been made out and prisoner remanded to custody. REX V. ROWE, 8 C. C. C. 28.

2. **Sections 10 and 17** — POWER OF COURT — CRIMINAL NEGLIGENCE.]—The Fugitive Offenders' Act R. S. C. c. 143, sect. 10 and 17 empower the court on habeas corpus proceedings to review the facts constituting the ground of commitment, and all the circumstances of the case. These special sections must be liberally construed, the underlying principle that our Government will not surrender to a foreign state or any other Government of His Majesty's possessions any criminal fugitive without clear evidence of guilt. REGINA V. JOHN DELISLE, 5 C. C. C. 210.

FUNCTUS OFFICIO.

Order for Bail — AFTER COMMITTAL OF WITNESS FOR PERJURY.]—A Judge after directing the committal of a witness for perjury, is not thereby functus officio, but may admit prisoner to bail. EX PARTE RUTHVEN, 6 B. C. R. 115, 2 C. C. C. 39.

GAMING.

1. **Apparatus for Gaming** — RESERVED CASE — APPEAL RESTRICTED TO QUESTION OF LAW.]—Where a defendant was found guilty of having counselled another to keep a gaming house by inducing him to allow the defendant to place on his premises a slot machine and to permit persons to resort to his premises for the purpose of playing on such machine a game of chance, or a mixed game of chance and skill, it was held upon a case reserved to the court of appeal that the court had no jurisdiction in the matter where the stated case did not submit the facts on which the finding was based, the appeal being on a matter of fact and not on a question of law. REX V. FORTIER, 7 C. C. C. 417.

2. **Appeal** — DEFECTIVE NOTICE — NATURE OF CONVICTION NOT STATED — CODE SEC. 199.]—A notice of appeal from a conviction for playing in a common gaming house, which states accused was convicted of "looking on" is defective and does not give the court jurisdiction to hear the appeal. R. V. AH YIN, 6 C. C. C. 63.

3. **Becoming Custodian of Wager** — ELECTION — STAKEHOLDER — ACCESSORY.]—R. S. C. c. 159, s. 9, provides inter alia that "everyone who becomes the custodian or depositary of any money ..staked, wagered, or pledged upon the result of any political or municipal elec-

tion . . is guilty of a misdemeanour," and a sub-section says that "nothing in this section shall apply to bets between individuals" :—Held, reversing 21 A. R. 55, 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. c. 145. Regina v. Dillon, 10 P. R. 352, overruled. 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. WALSH v. TREBILCOCK, 23 S. C. R. 695.

4. **Becoming Custodian of Wager** — RESTRICTIONS TO EVENTS TO TAKE PLACE IN CANADA.]—R. S. C. c. 159, s. 9, provides that "everyone who becomes the custodian or depositary of any money, property, or valuable thing staked, or wagered, or pledged upon the result of any political or municipal election, or of any race, or of any contest or trial of skill or endurance of man or beast, is guilty of a misdemeanour :—Held, that this enactment does not extend to the result of any election, race, or contest, &c., to take place outside of Canada. Wells v. Porter, 3 Scott 141, followed. REGINA v. SMILEY, 22 O. R. 686.

5. **Becoming Custodian of Wager.**]—The Act 40 Vict. c. 31 (D.), intituled an Act for the repression of betting and pool selling, does not apply to stakeholders in any of the three cases mentioned in s. 2. REGINA v. DILLON, 10 P. R. 352.

6. **Betting** — HORSE RACE IN FOREIGN COUNTRY.]—The defendant occupied a tent in a village open 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 were legalized. In the tent was a blackboard on which were the names of the horses and jockies 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 to B. at the race track to place a certain sum of money on a horse named by the applicant at track quotations, and upon the transmission thereof, the applicant agreed to pay 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 monies 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 ss. 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.

7. **Betting** — HORSE-RACE IN FOREIGN COUNTRY — TELEGRAPHING BETS.]—A bank, a 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 the 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 telegraph instructions from the persons 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 ss. 197-198 of the Criminal Code. REGINA v. OSBORNE, 27 O. R. 185.

8. **Betting on Election** — STAKEHOLDER — R. S. C. c. 159, s. 9 — ACCESSORIES — R. S. C. c. 145, s. 7.]—The depositary of money staked by two individuals on the result of an election for the House of Commons is guilty of a misdemeanour under R. S. C. c. 159, s. 9, (Crim. Code, s. 204), and the bettors are accessories to the commission of the offence. Regina v. Dillon, (10 Ont. P. R. 352), overruled. WALSH v. TREBILCOCK, 23 S. C. R. 695.

9. **Black Jack.**]—Certain parties played the game called black jack in a room to which the public had access, there being no constant dealer :—Held, that the lessee of the room was legally convicted of keeping a common gaming house. REGINA v. PETRIE, 7 B. C. R. 176.

10. **Broker Acting for Fixed Commission on Speculative Contract.**]—A broker acting for two parties, a buyer and seller, where his commission is a fixed and determined sum, and who is not shown to have had any guilty knowledge of the intention of the parties to gamble on the rise or fall of merchandise, is not liable under sec. 201, neither is he punishable as an accessory under sec. 61. REGINA v. DOWD, 4 C. C. C. 170, Q. R. 17, S. C. 67.

11. **Bucket Shops** — STOCKS — CODE SEC. 201-951.]—Transactions in a bucket shop where there is no intention to transfer any property to anyone, being merely bets on the rise and fall of the market and therefore gambling transactions pure and simple, render a managing agent of the company carrying on the business liable as an accessory under Code sec. 61, and also liable to a charge of keeping a common gaming house under Code sec. 201; even though he had no interest in the transactions other than commission paid him by the company. R. v. HARKNESS, (No. 1) 10 C. C. C. 193, 10 O. L. R. 555.

12. **Bucket Shop** — TRADING IN DIFFERENCES — NO INTENTION TO TRANSFER PROPERTY — OPINION EVIDENCE — CODE SEC. 61-201.]—1. Where the trial Judge without a jury found that the transactions complained of were merely bets on the rise and fall of the market, gambling transactions pure and simple—and there was evidence to support that finding, the fact that opinion evidence regarding the suposed legality or illegality of the transactions was improperly received, will not be considered a substntaial wrong or miscarriage, where there was no jury and there was sufficient evidence irrespective of the opinion evidence. 2. The managing agent of a company who operates a bucket shop, where gambling transactions in differences are carried on, without any intention of transfering property in the stocks, is liable to conviction under Code sec. 201, as keeper of a common gaming house; he is also liable as an accessory under Code sec. 61. R. v. HARKNESS, (No. 2) 10 C. C. C. 199, 10 O. L. R. 555.

13. **Card Playing** — POWER OF LICENSE COMMISSIONER TO PROHIBIT — MENS REA.]—License Commissioners under the Ontario Liquor License Act have power to prohibit all card playing on licensed premises, whether of public guests or private friends of the proprietor even where there is no betting. The prohibition is in a manner attached to the premises, and the landlord's ignorance of games carried on in his absence is no excuse. The knowledge of a proprietor is not an element of the offence. REX v. LAIRD, 7 C. C. C. 318, 6 Ont. L. R. 180.

14. **Card Playing** — PENALTY.]—The defendant was convicted by the police magistrate for the city of Toronto for playing at a game of cards called faro, contrary to the statute 12 Geo. II. c. 28, and sentenced to pay 50 pounds sterling, the penalty thereby imposed :—Held, that under 27 Geo. III. c. 1, s. 2, the jurisdiction of justices of the peace in such cases was taken away, and in lieu thereof the recovery of such a penalty was to be a civil action. The conviction was therefore quashed :—Semble, that the defendant could have been convicted under the Municipal Act, 46 Vict. c. 18, s. 49, s.-s. 33, against gambling, and the by-law of the municipality passed with reference thereto. REGINA v. MATHESON, 4 O. R. 559.

15. **Common Betting House** — RACE-COURSE OF INCORPORATED ASSOCIATION — CRIM. CODE SECS. 204-197.]—The law prohibits the keeping of a common betting house on the race course of an incorporated association, just as much as it prohibits the keeping of it elsewhere, and prohibits the keeping of it there just as much during

the actual progress of a race meeting as at any other time; the exception contained in s.-s. (2) sec. 204 Crim. Code is expressly limited to the first part of the section and it cannot be read into sec. 197 Crim. Code. REX. v. HANRAHAN, 5 C. C. C. 430, 3 O. R. 659.

16. **Common Gaming House** — CRIMINAL CODE 783-784.]—The offence of keeping a common gaming house is not included in the words "disorderly house," secs. 783 and 784 of the Criminal Code, and a Judge of the sessions of the peace has no summary jurisdiction to try the accused on such a charge even with consent. REGINA v. FRANCE, 1 C. C. C. 321.

17. **Confiscation of Gaming Instruments, Moneys, &c.** — EVIDENCE.]—Section 575 of the Criminal Code, authorizing the issue of a warrant to seize gaming implements on the report of "the chief constable or deputy chief constable" of a city or town, does not mean that the report must come from an officer having the exact title mentioned but only from one exercising such functions and duties as will bring him within the designation used in the statute. Therefore, the warrant could properly issue on the report of the deputy high constable of the city of Montreal. The warrant would be good if issued on the report of a person who filled de facto the office of deputy high constable though he was not such de jure. In an action to revendicate the moneys so seized the rules of evidence in civil matters prevailing in the Province would apply, and the plaintiff could not invoke "The Canada Evidence Act, 1893," so as to be a competent witness in his own behalf in the Province of Quebec. O'NEIL v. ATTORNEY-GENERAL OF CANADA, 26 S. C. R. 122. 1 C. C. C. 303.

18. **Constitutional Law.**]—A "gaming 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, REGINA v. DAVIDSON, 8 Man. L. R. 325, REGINA v. HERMAN, 8 Man. L. R. 330.

19. **Fan Tan** — DISORDERLY HOUSE — SEC. 196-198.]—The evidence showed that accused was proprietor of a room where persons were found seated around a table on which were card chips, coins, and money; each person had a pile in front of him, and accused had a box; and the others got the chips from him; accused stated the game was fan tan, and was taking his share of the money after each hand had been played :—Held, that there was unquestionable evidence to show that accused was proprietor of a place, and that he kept it for purposes of gain within the meaning of Code sec. 196. R. v. MAH KEE, 9 C. C. C. 47.

20. **Gambling** — LEGISLATIVE POWERS OF THE TERRITORIES — B. N. A. ACT, SEC. 91 — ULTRA VIRES.]—R. O. (1888) c. 38, s. 5, enacts that : "Every description of gambling and all playing of faro, cards, dice, or other game of chance with betting or wagers or for stakes of money, or other things of value, and all betting and wagering on any such games of chance is strictly forbidden in the Territories, and any person convicted before a justice of the peace, in a summary way of playing at, or allowing to be played at on his premises, or assisting, or being engaged in any way in any description of gaming as aforesaid, shall be liable to a fine for every such offence, not exceeding one hundred dollars with costs of prosecution and on non-payment of such fine and costs forthwith after conviction, to be imprisoned for any term not exceeding three months" :—Held, that the evident purpose of the said section was to create an offence, subjecting the offender to criminal procedure, in the interest of public morals, and for the protection of civil rights; and that the enactment therefore came within the decision in Russell v. The Queen, and consequently was ultra vires. REGINA v. KEEFE, 1 Terr. L. R. 280.

21. **Gambling** — PLEA OF GUILTY — APPEAL, RIGHT OF — CRIMINAL CODE S. 879 — ESTOPPEL.]—A person who has pleaded "guilty" to a charge, and has been summarily convicted may raise a question of law in an appeal under s. 897 of the Criminal Code, but on such appeal his former plea of "guilty" estops him from calling upon the respondent to prove his guilt. So far as his guilt or innocence is concerned he is not a "party aggrieved" within the meaning of s. 879 of the Criminal Code. THE KING (in the inf. of Fyffe) v. BROOK, 5 Terr. L. R. 369.

22. **Game of Chance** — EUCHRE NOT A GAME OF SKILL.]—Whatever adroitness may be contributed by the player, euchre is a game of chance, and it would be a perversion of words to say it was in any sense a game of skill. REX v. LAIRD, 7 C. C. C. 318, 6 O. L. R. 180, 23 Occ. N. 281.

23. **Gaming House** — GAME PLAYED IN A FOREIGN COUNTRY — CRIM. CODE 196.] —The use of a gaming instrument in this country for deciding who were the winners of moneys staked in a foreign country, and if won, paid there, is not gaming here, there being no stake in this country. REGINA v. WETTMAN, 1 C. C. C. 287, 25 O. R. 459.

24. **Gaming House** — JURISDICTION OF MAGISTRATE TO TRY SUMMARILY.]—A police magistrate under Part LV. has jurisdiction to deal with a charge of keeping a gaming-house, as falling within the category of disorderly houses, in a summary way without the consent of the accused, but such jurisdiction is optional, and he may commit for trial. EX PARTE JOHN COOK, 3 C.C.C. 72, 4 B.C.R. 18.

25. **Gaming House** — ORDER TO ENTER — WITHIN WHAT TIME TO BE EXECUTED.] —An order to enter a house reported to be a common gaming house must be executed within a reasonable time. REGINA v. AH SING, 2 B. C. R. 167.

26. **Gaming House** — POKER — COMMITMENT.]—Held, 1. That keeping a common gaming house is an indictableoffence at common law. 2. That the car ds, etc., referred to in sec. 3 of 38 Vict., c. 41, must be such as are ordinarily used in playing an unlawful game. 3. That a commitment for unlawfully keeping a common gaming house sufficiently describes an offence, so that the party committed cannot be discharged on the ground of there being any defect on the face of the commitment in merely thus describing the offence. 4. That "poker" is not in itself an unlawful game. REGINA v. SHAW, 4 Man. L. R. 404.

27. **Guessing Contest.**]— The defendant, the proprietor of a newspaper, advertised in it that whoever should guess the number nearest to the number of beans which he had placed in a sealed glass jar in a window on a public street, should receive a $20 gold piece; the person making the second 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 on a contravention of C. S. C. c. 95 :—Held, that 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 disposal of property within the meaning of the Act. REGINA v. DODDS, 4 O. R. 390.

Per Hagarty, C. J.—The Act applied to the unlawful disposal of some existing real or personal property. In this case there were no specific gold coins, nor was there any particular set of harness, to be disposed of, which might have been forfeited pursuant to s. 3 of the Act, and therefore the conviction was bad on that ground. IB.

28. **Guessing Contest.**]—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 the defendant should not get the costs of quashing conviction made to test the law in such a case. REGINA v. JAMIESON, 7 O. R. 149.

29. **Horse racing**—LEASE OF BETTING PRIVILEGES — LIABILITY OF DIRECTOR — CODE SEC. 197-8- 204.]—The defendant the president of a Jockey Club, was charged with keeping a common betting, to wit, a common gaming house at the Woodbine Race Course. The defendant admitted that the Jockey Club leased the betting privileges for gain, and he had full knowledge of, and acquiesced in it. But the defendant had no further interest in the bets or wagers made. It was not shown that the defendant personally

promoted the action or did more than merely acquiesce :—Held, that a director is not liable for a violation of a statute simply because of his office; in order to render him liable it must be shown that he personally participated in the proscribed acts; mere acquiescence does not amount to personal participation; that he could not herefore be held liable as an aider or abbettor under Code sec. 61; or as keeper of a common gaming house under Code secs. 197-8. R. v. HENDRIE, 10 C. C. C. 298, 6 O. W. R. 1015, 11 O. L. R 202.

30. **Keeping Common Betting House** — PRESIDENT OF INCORPORATED RACE ASSOCIATION — CRIMINAL CODE ss. 61, 179, 198 — "PARTY TO OFFENCE" — LEASE OF BETTING PRIVILEGES — KNOWLEDGE AND ACQUIESCENCE OF ACCUSED — ABSENCE OF PARTICIPATION. REX v. HENDRIE, 6 O. W. R. 1015, 11 O. L. R. 202.

31. **Keeping Common Gaming House** — CONVICTION — EVIDENCE TO SUSTAIN — KEEPING FOR GAIN — RESORT OF PERSONS TO HOUSE — GAME OF CHANCE. REX v. MAH KEE (N. W. T.), 1 W. L. R. 37.

32. **Keeping a Common Gaming House.]** —PENALTY.]—A conviction under the provisions of the Act respecting Gaming Houses, R. S. C. c. 158, s. 6, provided, in addition to fine and imprisonment, for distress in default of payment of the fine :—Held, that the punishment being in excess of that warranted by the statute, the conviction must be quashed :— Held, also, that, as the maximum penalty prescribed for the offence was imposed, the defect in the conviction in the provision for distress was not cured under R. S. C. c. 178 ss. 87 and 88. Regina v. Sparham, 8 O. R. 570, approved of. REGINA v. LOGAN, 16 O. R. 335.

33. **Keeping Common Gaming House** — EVIDENCE OF OFFENCE — OCCUPANT OF PREMISES.]—The evidence disclosed that two or three police officers saw several men in a stable sitting round a table, and one of the constables saw dice being thrown and heard somebody say "eleven wins"; and a constable said that, when the police entered the place, the men tried to get out and scattered the money that was on the table, and that the prisoner was in charge of the money on the table. The prisoner gave evidence on his own behalf, and also called witnesses to shew that the game they were playing was "poker". The prisoner said he saw no dice; that he did not own the place, nor did he act as banker at the game. Two of the witnesses for the defence said that a game of "craps" (played with dice) was going on at the same time, but in another room; and another witness for the defence said that he had been in the place at other times and had seen the prisoner acting as banker at gambling games there :—Held, that this evidence went to shew that the place was used as a gaming house; and had there been any evidence that the prisoner was the owner, lessee, or occupier of the premises, there was ample evidence to shew that it was a place used for playing at games of chance, and so a common gaming house. But the prisoner denied being the keeper of the place, and, unless from the fact sworn to, that the prisoner was in charge of the money for the game, the evidence as to the person who kept the place was as strong against any of the others found there as against him : ss. 196 and 198 of the Code. REX v. DUFFY, 21 Occ. N. 477.

34. **Keeping a Common Gaming House** — OFFENCE IN UNITED STATES.]—In a betting game called "policy," the actual betting and payment of the money, if won, took place in the United States; all that was done in Canada being the happening of the chance, on which the bet was staked, by means of implements operated in the house of defendant : Held, there was no offence under s. 198 of the Criminal Code of 1892 of keeping a common gaming house within that section. REGINA v. WETTMAN, 25 O. R. 459.

35. **Keeping a Common Gaming House** — CONTRACTS ON MARGIN.]—The Act 51 Vict. c. 42, s. 1 (D.), makes it an indictable offence to make or authorize contracts by way of gaming or wagering on the rise or fall of stocks and merchandise, and to habitually frequent any office or place where such contracts are made. By s. 3, the keepers of such places are held to be keepers of common gaming-houses, the place of business to be a common gaming-house, and the instruments used instruments of gaming, "the whole within the meaning of R. S. C. c. 158, the Act respecting Gaming-Houses, and shall be subject to all the provisions of

the said Act." Section 6 of R. S. C. c. 158 enacts that persons playing or looking on while others are playing are guilty of an offence under the Act; and by s. 9 authority is given to the police magistrate to try offences under the Act summarily. An information under R. S. C. c. 158, charging the defendant and others with unlawfully playing in a common gaming-house, was heard before the police magistrate summarily, and the defendant convicted. The evidence shewed that the defendant was merely in a place where it was alleged that contracts in violation of 51 Vict. c. 42, were made :—Held, that s. 3 of 51 Vict. c. 42 (D.), was not incorporated into ss. 4 and 6 of R. S. C. c. 158, so as to make the fact of a person being in an office or place of business where such prohibited contracts were made equivalent to playing or looking on while others were playing in a common gaming-house and so punishable by summary convictions. REGINA v. MURPHY, 17 O. R. 201.

36. **Keeping Common Gaming House** — "GAIN" — PAYMENT FOR REFRESHMENTS — PROFIT — MISDIRECTION]— ACQUITTAL OF DEFENDANT — CROWN CASE RESERVED — NEW TRIAL.]—The defendant was indicted for keeping a common gaming house, contrary to ss. 196 (A) and 198 of the Criminal Code. The evidence shewed that the defendant was the manager of a cigar shop, in the rear of which was a room to which persons, chiefly customers, commonly resorted for the purpose of playing "poker". Out of the stakes on most of the hands a sum of five cents was withdrawn to cover the expenses of refreshments consumed by the players. No charge was made for the use of the room. The "rake-off" did not more than cover a fair price for the refrehsments. The proprietor or manager derived an indirect advantage from the sale of cigars to the players from 50 to 100 being sold to them in the course of a night's play :—Held, that "gain" may be derived indirectly as well as directly, that by what defendant allowed to be done in the room mentioned, the profits of his usual business were increased more or less owing to the sale of the goods in which he dealt, and so he might be found to have kept the room for gain, though the gain was confined to the profits on the cigars which he sold to the players. The question of what is a keeping for gain ought not to be embarrassed by the consideration of whether the amount the defendant receives is an actual substantial profit to him over the price of the cigars which he sells and the refreshments which he furnishes to the players. The direction of the Judge at the trial to the jury, upon which the defendant was acquitted, was found to be wrong, upon a case reserved by the Crown, but the court declined to order a new trial. REX v. JAMES, 2 O. W. R. 342, 23 Occ. N. 220, 6 O. L. R. 35.

37. **Keeping Disorderly House** — COMMON GAMING HOUSE.]—In order to obtain under s. 198 of the Code a conviction of a person for keeping a disorderly house, to wit a common gaming house, as defined by s. 196 (A), the Crown must shew by satisfactory evidence that the person charged is deriving some gain or profit from keeping the house, room or place, and allowing games of chance to be played therein. REGINA v. SANDERS, 20 C. L. T. Occ. N. 213.

38. **Lottery** — ART ASSOCIATION.] — The defendant, an agent of an incorporated art society, was convicted by a police magistrate for that he did "unlawfully sell and barter a certain card and ticket for advancing, selling, and otherwise disposing of certain property to wit, pictures, or one-half the stated value of each picture in money, by lots, tickets, and modes of chance" :—Held, that "property" in s.-s. 1 (b) of s. 205 of the Code is not necessarily to be read "specific property," the essence of the enactment being in the disposal of any property by any mode of chance :—Held, also, there being evidence of an option reserved to the society to give money instead of pictures to the winning tickets, that this destroyed the privilege in favour of works of art under s.-s. 6 (c) of the Code. REGINA v. LORRAIN, 28 O. R. 123.

39. **Lottery.**]—The Provincial Legislatures have no jurisdiction to permit the operation of lotteries forbidden by the criminal statutes of Canada. L'ASSOCIATION ST. JEAN-BAPTISTE DE MONTREAL v. BRAULT, 30 S. C. R. 598.

40. **Margins** — PAYMENT OF DIFFERENCES — CRIMINAL CODE — SECTION 201.]—Defendant instructed the plaintiffs to sell shares in the C. T. Co. for him, who asked for cover, and defendant paid $600;

no time was fixed for delivery; plaintiffs asked defendants for more, as shares were rising, and finally called for $2,400, which defendant refused to pay. Plaintiffs then, as they alleged, purchased the shares to satisfy their own liability, and sued for amount paid :—Held, by Drake, J., dismissing the action, that as no stock was ever delivered, or intended to be delivered, and as the intent was to make a profit from the fluctuations of the stock market, the transaction was illegal. B. C. Stock Exchange, Limited v. Irving, 8 B. C. R. 186.

41. **Municipal Regulations.**]—A clause in a by-law that no gambling, profane swearing, &c., should be permitted in any licensed tavern or shop :—Held, authorized by the Municipal Act, 36 Vict. c. 48, s. 379, s.-ss. 33, 36, and by the general police power of the council. In re Brodie and Town of Bowmanville, 33 U. C. R. 580.

42. **Poker** — Municipal By-law Suppressing Gaming.]—Defendant was convicted of allowing a game of chance to be played on his premises for money, contrary to by-law in that behalf of the city of Toronto. The evidence shewed the place was the private house of defendant, and that his friends were accustomed to drop in on Sundays and sometimes play "poker" for money. The by-law was passed in pursuance of powers conferred on municipalities by R. S. O. 1897, c. 233, sec. 549. :—Held, that the element of frequency at least is essential to make out that any place is a gambling house; and the isolated instances (such as the present) where Jews came together on Sundays in a private house to play cards, are not within the scope of the statute; the by-law therefore transcends the enabling statute. Rex v. Spegelman, 9 C. C. C. 169, 9 O. L. R. 75.

43. **Sale of Betting Privilege on Race Course.**]—The object of the legislature in enacting the latter part of s.-s. 2 of s. 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, 28 O. R. 579.

44. **Sale of Goods.**]—Section 2 of R. S. C. c. 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 the defendant that in certain spaces on the two shelves there were in cans of tea a gold watch, a diamond ring, or $20 in money, he paid one dollar and received a can of tea, which contained an article of small value; he handed the can back, paid an additional fifty cents and secured another can, which also contained an article of small value. He handed this can back also, paid another fifty 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," &c :—Held, that the transaction came within the terms of s. 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 conviction. Regina v. Freeman, 18 O. R. 524.

45. **Summary Conviction** — Evidence of Accomplice.]—Where the only evidence against accused was the evidence of an accomplice who had received money to testify, the conviction was set aside on appeal. R. v. Ah Jim, 10 C. C. C. 126.

46. **Summary Trial** — Jurisdiction — Disorderly House — Code Sec. 783.]—A magistrate has jurisdiction by Code sec. 783 (f) to try summarily without consent a charge of keeping a common gaming house; as by sec. 196 of the Code a common gaming house is included in the term "disorderly house"; and rule of construction (noscitur a sociis) does not apply to sub-sec. (f) of sec. 783. R. v. Flynn, 9 C. C. C. 550, 1 W. L. R. 388.

47. **Unlawful Making Contracts for Sale of Stocks** — KEEPING COMMON GAMING HOUSE — STOCK TRANSACTIONS ON MARGIN — AGENT FOR BROKER — EVIDENCE — ONUS — CRIMINAL CODE — AIDING AND ABETTING.]—Defendant was convicted upon charges of unlawfully making contracts purporting to be for the sale of stocks, goods, wares, or merchandise, in respect of which no delivery thereof was made or received, without the bona fide intention to make such delivery, with intent to make gain or profit by the rise or fall in price of the stocks, goods, etc., contrary to s. 201 of the Criminal Code, and of being a keeper of a common gaming house contrary to said section. The following were submitted for the opinion of the court of appeal :—1. Does the evidence given on behalf of the Crown prove an offence against sec. 201 of the Criminal Code, under which the indictment was laid ? 2. Does the evidence shew that the contracts charged in the first and second counts of the indictment were made or authorized by defendant; and if the evidence shews that defendant had no interest in either of the transactions with which he is charged in said counts except the payment of his commission, which was a fixed amount, and was payable to him whether the price of wheat or of the stock, the subject of such transaction, rose or fell, or remained stationary, can the conviction upon such counts or either of them be sustained ? 3. Does the evidence shew that the contracts charged in the first and second counts of the indictment were made within the Dominion of Canada and can the conviction upon said counts be sustained ? 4. Was the evidence of J. G. Beatty and Clarence W. Cady, received by the county court Judge upon the trial of the accused, admissible as evidence, and having been received should such evidence be sustained ? 5. Could defendant properly be convicted of an indictable offence under s.-s. 3 of s. 20, of the Criminal Code ? 6. Is defendant liable to a penalty or punishment in respect of an offence under s.-s. 3 of s. 201 of the Criminal Code by virtue of s. 951 or otherwise, under the Code or under the common law ? The evidence shewed that from the beginning of January, 1904, until the information was laid, some time after 1st March in the same year, defendant was occupying a room or office in the town of Niagara Falls, Ontario, in which he was carrying on a business under the name and style of Harkness & Co. The nature of the business was learned from a circluar issued by defendant, a copy of which was put in evidence. It was headed "Office of Harkness & Co., Brokers, Stocks, Grain, and Provisions." Defendant was not a member of the stock exchange at New York nor Chicago, and he did not deal directly with either of these cities. He claimed to be a branch or agency of a firm of operators know as Richmond & Co., whose head office was in Pittsburg, Pennsylvania, with a branch in Buffalo, N.Y. Defendant swore that he did not know whether any member of the firm of Richmond & Co. was a member of either of these exchanges. When giving orders the persons who dealt with defendant deposited with him sums of money, never exceeding a margin of 2 per cent in the case of stocks or 1 per cent in the case of grain or provisions, out of which the defendant received a commission from the Buffalo office. Each order was telegraphed to the Buffalo office, and the next day defendant handed to the customer a paper, signed "Harkness & Co., brokers," containing, amongst other things, a notification to the customer as follows :—"Mr. —— ,You have bought from Richmond & Co., Pittsburg, at the price named in this memorandum, for delivery on demand, subject to the contract and notice and provisions above and herein." In the margin appear the words: "I consent and agree to the contract expressed hereon." But the customer was not required or expected to sign, and apparently never did sign it. Save this document, there was no delivery, and it was proved that in answer to a question put to him by the chief of police, to whom he was explaining the nature of the business, defendant stated that he did not deliver goods or stock—the people did not do business that way. If the stocks, grain, or provisions held by the customer went up in price, he directed defendant to sell out and received back his deposit with the profit. If the price declined below the margin, the customer either put a further deposit or let his first deposit go and bore the loss. Defendant remitted the amounts he received each day to Richmond & Co., Buffalo, who remitted to him the sums payable to customer on the result of transactions closed out during the day :—Held, with regard to defendant's position, that he is only an

agent receiving a commission and is therefore not liable. Upon his own admissions his office is a branch of Richmond & Co.; that he was engaged in soliciting, attracting, or inducing persons to deal with Richmond & Co. through him in illegal transactions, and, as the county court Judge has found, he had a guilty knowledge of the nature of the dealings. There was no purchase shewn on the exchange for or on account of the customer. There was nothing but a contract or agreement with Richmond & Co., to which the defendant was a party, with knowledge of its real nature. The customer and Richmond & Co., through and by the aid of the defendant, have committed the offence prohibited by s. 201 (1) (b), and defendant has done acts for the purpose of aiding them to commit the offence and has abetted them in the commission of the offence. At common law one who aided and abetted in the commission of an offence thereby rendered himself liable as a principal. Then s. 61 of the Criminal Code expressly declares that every one is a party to and guilty of an offence who does or omits an act for the purpose of aiding any person to commit the offence or abets any person in commission of the offence. That is to say, by aiding or abetting in the commission of an offence, he becomes a party to and guilty of the same offence. Thus he becomes a party principal, and there appears to be no reason why he should not be indicted or charged as a principal under the Code. See Regina v. Campbell, 2 Can. Crim. Cas. 357. Upon the evidence it must be held that the contracts charged in the first and second counts of the indictment were made in Canada—according to the holding of the majority of the Judges of the Supreme Court in Pearson v. Carpenter, 35 S. C. R. 380. The conviction of defendant under s.-s. (3) of s. 201 was properly made. By that sub-section it is declared that every office or place of business wherein is carried on the business of making or signing or procuring to be made or signed, or negotiating or bargaining for the making or signing of such contracts of sale or purchase as are prohibited by this section, is a common gaming house, and every one who as principal or agent occupies, uses, manages, or maintains the same, is the keeper of a common gaming house. All the questions should be answered in favour of the Crown, and the conviction should be affirmed. REX V. HARKNESS, O. W. R. 219, 10 O. L. R. 555.

See also CERTIORARI — CONVICTION — DISORDERLY HOUSE — HABEAS CORPUS.

GRIEVOUS BODILY HARM.

1. **Corporation Subject to Indictment for, even when Death Ensues.**]—The words "grievous bodily harm" in section 252 have no technical meaning, and in their natural sense include injuries resulting in death, and where a corporation was indicted for unlawfully neglecting to take reasonable precautions in the maintainance of a bridge, thereby causing the death of a number of persons, it was held that such corporation could not escape liability for causing "grievous bodily harm" merely because the consequences of its breach of duty were more serious than would have sufficed to make it punishable. REGINA V. UNION COLLIERY CO., 3 C. C. C. 523, 7 B. C. R. 247.

2. **Grievous Bodily Harm** — PRECISE MEANING OF.]—To constitute grievous bodily harm under sec. 783, it is not necessary that the injury should be either permanent or dangerous, if it be such as seriously to interfere with the comfort or health it is sufficient. REGINA V. ARCHIBALD, 4 C. C. C. 159.

See also ASSAULT.

HABEAS CORPUS.

I. AFFIDAVITS, USE OF.
II. AMENDMENT.
III. APPEAL OR REVIEW.
IV. COSTS.
V. EVIDENCE.
VI. JURISDICTION.
VII. REMAND.
VIII. RETURN.
IX. RIGHT TO.
X. WARRANT OF COMMITMENT.
XI. MISCELLANEOUS.

I. AFFIDAVITS, USE OF.

1. **Admissibility of Affidavit** — EXTRINSIC FACT.]—The prisoner's affidavit which alleges an extrinsic fact in confession and

avoidance of the return, but not directly contradicting the return, may be read on a motion for a writ of habeas corpus. REGINA v. CAVELIER, 1 C. C. C. 134, 11 Man. L. R. 333.

2. **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, Unreported. N. S.

3. **Irregularity** — CROWN RULES — COSTS.]—On a motion for a habeas corpus, the preliminary objections were taken that the affidavits proposed to be read in support of the prisoner's discharge had not been served upon the interested party, that the affidavits filed were not indorsed with a memorandum stating on whose behalf they were filed, and that the affidavits had been interlined and corrections had been made therein which had not been initialled and rewritten in the margin by the commissioner: Crown Rules 15, 163, 17, 352, 348, and 463 :—Held, that these Rules governed and the irregularities should not be condoned. The applicant must pay the costs of this application, but should have leave to renew his motion. IN RE HAYES, 21 Occ. N. 87.

4. **Practice** — AFFIDAVIT — SURPLUSAGE.]—It is not a ground for setting aside a writ of habeas corpus that the affidavit on which the fiat for the writ was granted was entitled "In the Supreme Court, ex parte, etc.," the words after "Supreme Court" being surplusage. Where a Judge granted a fiat for a writ of habeas corpus against two persons to bring up the bodies of two infant children, the court would not set aside the writ merely on the ground that it did not clearly appear from the affidavits that they were in the custody of both. It is not a ground for setting aside a writ of habeas corpus that two original writs were issued exactly alike, though such a proceeding was quite unnecessary. The fiat being indorsed on the writ and signed by the Judge is sufficient. It is not necessary for him also to sign the writ. The writ of habeas corpus issues by common law, except in cases of imprisonment on charges of crime to which only the statute 31 Charles II. applies. IN RE SHAUGHNESSY, 21 N. B. R. 182.

5. **Practice and Procedure** — AFFIDAVITS — PROCEDURE.]—The affidavit upon which an order for a habeas corpus is moved, should be intituled in one of the superior courts. As a general rule it should be made by the prisoner himself, or some reason, such as coercion, &c., shewn for his not making it. It is discretionary with the Judge to receive an affidavit of a different kind. IN RE ROSS, 3 P. R. 300.

Quære, can a Judge in chambers rescind his order for a habeas corpus, or quash the writ itself, on the ground that it issued improvidently. IB.

Quære, has he power to call upon the prosecutor or magistrate to shew cause why a habeas corpus should not issue, instead of at once ordering the writ. IB.

6. **Uncertainty as to Charge** — AFFIDAVITS, QUESTIONING MAGISTRATE'S CONCLUSIONS.]—It appeared, on an application for a habeas corpus, that the information laid before a police magistrate and warrant to apprehend were for an assaulting and beating, but it was disputed whether upon the examination and trial this was all the charge made, or whether he was not then charged with an aggravated assault; and whether, when he pleaded guilty, he did so to the former or the latter charge. Numerous contradictory affidavits were filed. Four several warrants of commitment were in the gaoler's hands, upon one at least of which the prisoner was retained in custody. They were all for the same offence, one having been from time to time substituted for the other. Quære, whether, or how far or for what purpose, affidavits can be received against a conviction or warrant of commitment valid on the face of it. A Judge cannot inquire into the conclusions at which the magistrate arrived if he had jurisdiction over the offence charged and issued a proper warrant upon that charge, but may inquire into what that charge was, or whether there was a charge at all. IN RE MCKINNON, 2 C. L. J. 324.

7. **Warrant Issued in Quebec** — CONSPIRACY — LOCALITY OF OFFENCE.] — A Judge cannot, upon the return of a habeas corpus where a warrant shews jurisdiction, try on affidavit evidence the question where the alleged offence was committed. Sections 4 and 5, R. S. C., 1887, c. 70, are not intended to apply to criminal cases where no pre-

liminary examination has taken place. Section 752 of the Criminal Code, 55 & 56 Vict. c. 29 (D.), only applies where the court or Judge making the direction as to further proceedings and inquiries mentioned therein has power to enforce it, and a court or Judge in Ontario has no power over a Judge or justice in Quebec to compel him to "take any proceedings or hear such evidence," &c. REGINA v. DEFRIES, REGINA v. TAMBLYN, 25 O. R. 645.

8. **Warrant of Arrest** — JURISDICTION — EVIDENCE TO CONTRADICT WARRANT.]—Where the warrant of arrest on its face shows jurisdiction in the magistrate issuing it, affidavit evidence is not admissible as to where the alleged offence was committed, if the offence charged be a criminal one. REGINA v. DEFRIES, 1 C. C. C. 207, 24 O. R. 645.

9. **When Affidavits May be Received** — SUBSTITUTED WARRANT — CONFLICTING WARRANTS — CHARGE OF ASSAULT AND BEATING AND CONVICTION OF AGGRAVATED ASSAULT — ADMISSION TO BAIL PENDING APPLICATION FOR DISCHARGE.]—It appeared on an application for a habeas corpus that the information laid before a police magistrate and warrant to apprehend were for an assaulting and beating but it was disputed whether upon the examination and trial this was all the charge made, or whether he was not then charged with an aggravated assault; and whether, when he pleaded guilty, he did so to the former or the latter charge. Numerous contradictory affidavits were filed. Four several warrants of commitment were in the gaoler's hands, upon one at least of which the prisoner was detained in custody. They were all for the same offence one having been from time to time substituted for the other. Quære, whether, or how far or for what purpose affidavits can be received against a conviction or warrant of commitment valid on the face of it. A Judge cannot enquire into the conclusions at which the magistrate arrived if he had jurisdiction over the offence charged and issued a proper warrant upon that charge, but may enquire into what that charge was, or whether there was a charge at all. Con. Stat. Can., cap. 9, probably applies only to common assaults, &c. A charge of assaulting and beating is not a charge of aggravated assault, and a complaint of the former will not sustain a conviction of the latter, though when the party is before the magistrate, the charge of aggravated assault may be made in writing and followed by a conviction therefor. Under doubts as to the law, and on the disputed facts, the prisoner was admitted to bail, pending the application for his discharge, which was to be renewed in term. IN RE MCKINNON, 2 C. L. J. 324.

II. AMENDMENT.

1. **Amending Warrant.**]—Held, that a magistrate acting under the treaty and statute after issue of a writ of habeas corpus, but before its return, might deliver to the gaoler a second or amended warrant, which, if returned in obedience to the writ, must be looked at by the court or Judge before whom the prisoner is brought. IN RE WARNER, 1 C. L. J. 16.

2. **Depositions** — AMENDMENT.]—Quære 1. As to the power of a Judge sitting in chambers, on an application of 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 depositions, &c.; 2. As to power of a court or Judge, upon reading the depositions to amend a bad warrant of a coroner, or issue a new one for the purpose of detaining a prisoner in custody. IN RE CARMICHAEL, 10 L. J. 325.

3. **Power to Amend Defective Conviction.**]—A defective conviction brought up by certiorari, whether in aid of a writ of habeas corpus, or on motion to quash the conviction, can be amended. REGINA v. MURDOCK, 4 C. C. C. 82, 27 A. R. 443.

III. APPEAL OR REVIEW.

1. **Appeal.**]—As to the right of appeal to the court of appeal from a decision of a Judge on a motion to discharge a prisoner. See IN RE BOUCHER, 4 A. R. 191. See IN RE MCKINNON, 2 C. L. J. 324.

2. The Act 29 & 30 Vict. c. 45, apparently substituted the right of appeal in habeas corpus cases for successive applications from court to court. IN RE HALL, 8 A. R. 135.

3. **Appeal to County Court** — Jurisdiction of Supreme Court — Crim. Code Sec. 881.]—Where an appeal has been taken from a summary conviction to the county court, and such appeal has been heard, the Supreme Court has no jurisdiction to impeach the conviction by habeas corpus proceedings being precluded by Crim. Code sec. 881. Rex v. Beamish, 5 C. C. C. 388, 8 B. C. R. 171.

4. **Application to Quash.**]—An application to the court to quash a writ of habeas corpus as improvidently issued may be entertained in the absence of the prisoner. In re Sproule, 12 S. C. R. 140.

5. **Conviction for Violation of License Laws** — Habeas Corpus — Motion for — Judgment Dismissing not Appealable when Prisoner is Discharged Before Appeal — Costs.]—The prisoner, Simon Fraser, had been convicted before F. A. Laurence, Stipendiary Magistrate for the town of Truro, of violating the license laws in force in the town, and was fined $40 and costs as for a third offence. Execution was issued in the form given in 4th R. S. c. 75, under which Fraser was committed to jail. While there he was convicted of a fourth offence and fined $80 and costs, and was detained under an execution in the same form. The matter came before the Supreme Court of Nova Scotia on a motion to make absolute a rule nisi granted by Weatherbe, J., under 4th R. S. c. 99, "Of securing the liberty of the subject." The rule was discharged. In re Simon Fraser, 1 R. & G., N.S.R. 354.

On appeal to the Supreme Court of Canada. It appeared that before the institution of the appeal, the time for which the appellant had been imprisoned had expired and he was at large. On motion to dismiss the appeal for want of jurisdiction :—Held, that an appeal will not lie in any case of proceedings for or upon a writ of habeas corpus when at the time of bringing the appeal the appellant is at large. Appeal dismissed. The question of costs was reserved and subsequently the court ordered that the respondent should be allowed his general costs of the appeal. Fraser v. Tupper, 21st June, 1880. N. S.

6. **Discharge from Custody not Reviewable.**]—Where the discharge from custody of an applicant under habeas corpus has been ordered by a tribunal of competent jurisdiction, that order is not reviewable by way of appeal or otherwise. In re Sproule (12 S. C. C. 141) distinguished. re E. G. Blair, 23 N. S. R. 225.

7. **Judge in Chambers** — Under R. S. O. 1887 c. 70, s. 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 s. 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.

8. **Nature of Enquiry into Evidence by Reviewing Court.**]—Under a writ of habeas corpus to determine whether a committment for surrender made by a commissioner under the Extradition Act was justifiable, a reviewing court will revise the commissioner's decision so far as to see whether 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 its sufficiency. Ex Patre Feinburg, 4 C. C. C. 270.

9. **No Appeal.**]—Sec. 6 of Cap. 94, 4th 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 cap. 99, R. S., "Of securing the liberty of the subject." In re A. L. McKenzie, 2 R. & G., N.S.R. 481.

10. **Review of Facts.**]—Held, that where the proceedings before a magistrate are removed under 29 & 30 Vict. c. 45, s. 5, the Judge is not to sit as a court of appeal from the findings of the magistrate upon the evidence; if any fact found by the magistrate is disputed, and he would have no jurisdiction had he not found the fact, then the evidence may be looked at to see whether there was anything to support his findings upon it; but if the jurisdiction to try the offence charged does not come in question as a part of the evidence, then the jurisdiction having attached, his finding is not reviewable as a rule except upon an appeal. Regina v. Green, 12 P. R. 373.

11. **Review of Proceedings of County Judge's Criminal Court, Ontario.**]—The County Judge's CriminalCourt, R. S. O. 1897, c. 57, s. 1, is a court of record, and after conviction its proceedings are reviewable only by a writ of error, the right of habeas corpus being precluded by R. S. O. 1897, c. 83. REGINA v. MURRAY, 1 C. C. C. 452, 28 O. R. 549.

12. **Right of One Writ** — 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 divisional court or before a Judge in chambers, 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 pleaded as res judicata. TAYLOR v. SCOTT, 30 O. R. 475.

13. **Summary Trial of Indictable Offences.**]—A conviction by a magistrate under the sections of the Criminal Code relating to the summary trial of indictable offences may be brought up for review by writs of habeas corpus and certiorari. REGINA v. ST. CLAIR, 27 A. R. 308.

14. **Supreme Court of Canada.**]—The only appellate power conferred on the supreme court in criminal cases is by s. 49 of the Supreme and Exchequer Court Act, and it could not have been the intention of the legislature, while limiting appeals in criminal cases of the highest importance, to impose on the court the duty of revival in matters of fact of all the summary convictions before police or other magistrates throughout the Dominion. Section 34 of the Supreme Court Amendment Act of 1876 does not in any case authorize the issue of a writ of certiorari to accompany a writ of habeas corpus granted by a Judge of the supreme court in chambers; and as the proceedings before the court on habeas corpus arising out of a criminal charge are only by way of appeal from the decision of the Judge in chambers, the said section does not authorize the court to issue a writ of certiorari in such proceedings; to do so would be to assume appellate jurisdiction over the inferior court. IN RE TREPANIER, 12 S. C. R. 111.

Semble, that c. 70 of the revised statutes of Ontario relating to habeas corpus does not apply to the supreme court of Canada. IB.

15. For the purpose of an appeal to the Supreme Court of Canada in a habeas corpus case the first step is the filing of the case in appeal with the registrar. The judgment of the court of appeal in a habeas corpus proceeding was pronounced on 13th of November, 1888. Notice of intention to appeal was immediately given but the case in appeal was not filed in the supreme court until 18th of February, 1889:—Held, that the appeal was not brought within sixty days from the date on which the judgment sought to be appealed from was pronounced and there was no jurisdiction to hear it. IN RE SMART INFANTS, 16 S. C. R. 396.

16. The jurisdiction of a Judge of the Supreme Court of Canada in matters of habeas corpus in criminal cases is limited to an inquiry into the cause of imprisonment as disclosed by the warrant of commitment. EX PARTE JAMES W. MACDONALD, 27 S. C. R. 683.

17. By s. 31 of the Supreme and Exchequer Courts Act (R. S. C. c. 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." On application to the court to fix a day for hearing a motion to quash such an appeal:—Held, that the matter was coram non judice, and there was no necessity for a motion to quash. IN RE LAZIER, 29 S. C. R. 630.

IV. COSTS.

1. **Adjournment** — EXPENSES — COSTS — DISCRETION — LEAVE TO APPEAL.]—When the officer or other person to whom a writ of habeas corpus is directed has obeyed it by bringing up the body and making his return, the Judge or court may make an order for payment by the applicant of the expenses of such officer or person. Dodd's Case, 2 De G. & J. 510, followed. The costs of proceedings by habeas corpus are governed by s. 119 of the Judicature Act, R. S. O. 1897, c. 51, and are therefore in the discretion of the

court or Judge. Regina v. Jones, (1894) 2 Q. B. 382, followed. Where, in obedience to a habeas corpus, the person to whom it was directed produced the body of an infant before a Judge in chambers, and filed affidavits in answer to the writ, making his return thereto, and the applicant thereupon applied for an enlargement, which the Judge granted upon condition of the applicant paying to the respondent a sum for counsel fee and expenses, and the applicant appealed from the order embodying such condition to a divisional court, which dismissed the appeal, giving the applicant leave however, to have her original application heard upon payment of the sum already ordered to be paid, and a further sum, the court of Appeal refused the applicant leave to appeal, from the order of the divisional court. Re Weatherall 21 Occ. N. 256, 1 O. L. R. 542.

2. **Costs on Discharge.**]—It is within a Judge's discretion to award costs against the prosecutor on the discharge of an applicant, but the power should be exercised only in extreme cases if at all. In re Walter Murphy, 28 N. S. R. 196.

3. **Theft** — Jurisdiction of County Court Judge.]—Defendant was convicted of theft by magistrate, and an application made to the county court Judge under habeas corpus proceedings, an order for his release was made and informant adjudged to pay costs. :—Held, on appeal, that inasmuch as the record did not show that the party ordered to pay the costs was the informant, the motion to discharge so much of the order as referred to costs, should be allowed..

V. Evidence.

1. **Contradicting Record.**]—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. In re Sproule, 12 S. C. R. 140.

2. **Conviction by Stipendiary Magistrate.**]—Habeas corpus to review a conviction made summarily under the Code, for theft by the stipendiary magistrate of the city of Halifax. Rex v. White, 34 N. S. R. 436, Regina v. Bowers, 34 N. S. R. 550.

3. **Investigation of Facts.**]—The prisoner was convicted by the police magistrate for the city of Toronto, for that she "did on," &c., "at the said city of Toronto, keep a 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 objections 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. R. 44.

4. **Practice and Procedure** — Evidence.] —The provision in R. S. O. 1887, c. 70, s. 6, that the court or Judge before whom any writ of habeas corpus is returnable, may proceed to examine into the truth of the facts set forth in such return by affidavit or by affirmation, is permissive only, and a Judge has power in such a case to direct that the evidence shall be taken viva voce before him. In this matter it was directed, as in re Murdoch 9 P. R. 132, that the evidence should be taken viva voce, and it was further ordered that a foreign commission should issue to take evidence abroad, and that the parties to the application should be at liberty to examine each other for discovery before the hearing. The costs of the demurrer to the return (II P. R. 482) were given against the father of the infant in any event of the proceeding. Re Smart Infants 12 P. R. 2.

5. **Question of Fact.**]—Held, that the conviction having been regular, and made by a court in the unquestionable exercise

of its authority and acting within its jurisdiction, the only objection being that the magistrate erred on the facts, and that the evidence did not justify the conclusion at which he arrived as to the guilt of the prisoner, the Supreme Court could not go behind the conviction and inquire into the merits of the case by the use of a writ of habeas corpus, and thus constitute itself a court of appeal from the magistrate's decision. IN RE TREPANIER, 12 S. C. R. III.

6. **Reviewing Decisions.**]—The Judges of the superior courts in the country where the fugitive is found may, on a writ of habeas corpus and certiorari, consider if there was suffiicent evidence before the committing magistrate to justify the committal, and so may review the decision of the magistrate on the evidence. IN RE BURLEY, 1 C. L. J. 34. IN RE WARNER, 1 C. L. J. 16.

7. **Reviewing Decisions.**]—The duty of the court or a Judge on a habeas corpus is to determine on the legal sufficiency of the commitment, and to review the magistrate's decision as to there being sufficient evidence of criminality. REGINA v. RENO, 4 P. R. 281.

8. **Weight of Evidence** — CONVICTION.]—Upon habeas corpus, the court will not judge of the weight of the evidence upon which a conviction was based, if there was evidence upon which the magistrate might have convicted. THE QUEEN v. ST. CLAIRE, 3 C. C. C. 551, 20 Occ. N. 204, 27 A. R. 308.

VI. JURISDICTION.

1. **County Court.**]—Quære, has a Judge of the county court as a Master of the Supreme Court, jurisdiction to hear an application by habeas corpus for the discharge of a prisoner tried summarily by a stipendiary magistrate, the ground of the application being that the prisoner had not consented to be tried summarily ? REGINA v. BOWERS, 34 N. S. R. 550.

2. **County Court** — LIBERTY OF SUBJECT ACT.]—The county court has no jurisdiction to issue a writ of habeas corpus. It has concurrent jurisdiction with the Supreme Court under the Liberty of the Subject Act. RE EDWIN G. HARRIS, N. S. R. 508.

3. **County Court Judge's Criminal Court** (N. S.) — RIGHT TO HABEAS CORPUS.]—The County Court Judge's Criminal Court (N. S.) having been constituted a Court of Record by Acts N. S. 1889, c. 11 and 52 Vict. (Can.) c. 47, s. 5, a conviction, by such court at Halifax, therein, of an offence tried by consent of accused is reviewable only under Part LII. of the Criminal Code and cannot be made the subject of investigation under a writ of habeas corpus. REX v. CAVANAGH, 5 C. C. C. 507.

4. **County Court Judge** — JURISDICTION —POWER TO ENQUIRE INTO.]—The County Court Judge's Criminal Court (N. S.) having general jurisdiction of the offence of larceny, its sentence cannot be discharged by habeas corpus proceedings. REGINA v. BURKE, 1 C. C. C. 539.

5. **County Court Judge** — LIQUOR LICENSE ACT — CONVICTION — FINDINGS OF FACT — REVIEW.]—A Judge of a county court has no jurisdiction to grant an order under the Habeas Corpus Act (Consolidated Statutes c. 41) unless the person applying is confined within the Judge's county. Where there is conflicting evidence in a case for selling liquor contrary to the Liquor License Act, 1896, the finding of the committing justice on questions of fact can not be reviewed on an application for an order in the nature of a habeas corpus. REX v. WILSON, EX P. IRVING, 35 N. B. R. 461.

6. **County Judge's Discretion.**]—When a county Judge has jurisdiction in the premises a superior court Judge will not in general (if at all) exercise a power of appeal by habeas corpus, which was never intended as a means of appealing from the discretion of a county Judge. RUNCIEMAN v. ARMSTRONG, 2 C. L. J. 165.

7. **Court of Record** — POLICE MAGISTRATE.]—The prisoner was charged before the police magistrate of Hamilton with an offence triable at the general sessions of the peace and having elected to be tried summarily, was convicted. Application was made for a habeas corpus under the Ontario Habeas Corpus Act R. S. O. 1897, c. 83. :—Held, that the

police court was not a court of record within the meaning of that statute; that the statute did not contemplate any courts of record inferior to or less principal than the High Court of Justice. R. v. GIBSON, 2 C. C. C. 302, 29 O. R. 660.

8. **Doubtful Jurisdiction.**]—Where a person is restrained of liberty under a statute, he should be discharged, unless the Judge is satisfied by unequivocal words in the statute that the imprisonment is warranted. IN RE SLATER AND WELLS, 9 L. J. 21.

9. Held, that in favour of liberty, it is the duty of a Judge on a habeas corpus, when doubting the sufficiency of a warrant of commitment, to discharge the prisoner. IN RE BEEBE, 3 P. R. 270.

10. **Exclusive Right to Issue.**]—The Judges of the Supreme Court of the 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. EX PARTE STRATHER, 25 N. B. R. 374.

11. **Illegal Sentence — WRIT OF ERROR.**]—A prisoner on conviction was sentenced to two years imprisonment in the county jail, and application was made by habeas corpus to review the sentence as illegal in the Supreme Court :—Held, discharging the rule nisi, that after conviction by a court of superior criminal jurisdiction, habeas corpus does not apply. In re Sproule, 12 S. C. C. 140, followed, and that the only recourse is by writ of error. Further (Weatherbe, J., dubitante) that the Supreme Court has undoubted jurisdiction to entertain such a proceeding, not only expressly and impliedly by statute but also as sharing in criminal matters, the original common law jurisdiction of its prototype, the court of Queen's bench in England. And that the convicting and reviewing tribunal being theoretically one and the same court, was not an objection. (Note.—But now, Criminal Code s. 745, seems to abolish the jurisdiction.) IN RE D. C. FERGUSON, 24 N. S. R. 106.

12. **Judge in Chambers.**]—As to the right of a Judge sitting in chambers in Upper Canada to order the issue of a writ of habeas corpus, where the custody is not for criminal or supposed criminal matter; the Imperial statute 56 Geo. III., c. 100, not being in force in this colony. In re Hawkins, 9 L. J. 298, doubted. IN RE BIGGER, 10 L. J. 329.

13. A Judge in practice court cannot grant a rule nisi for a habeas corpus ad Subjiciendum. REGINA v. SMITH, 24 U. C. R. 480.

16. A Judge in chambers, under orders of 1853, may grant a writ of habeas corpus. Re Paton, 4 Gr. 147. See REGINA v. ARSCOTT, 9 O. R. 541.

15. **Jurisdiction of Federal Supreme Court in Matters of.**]—In matters of habeas corpus, a Judge of the Supreme Court of Canada has equal and co-ordinate power with a Judge of a provincial Supreme Court, and is, therefore, not vested with appellate powers to void or reverse judgments of provincial courts on such matters. REX v. WHITE, 4 C. C. C. 430, 34 N. S. R. 436.

16. **Jurisdiction of Federal Judge in Habeas Corpus.**]—The jurisdiction of a Judge of the Supreme Court of Canada in matters of habeas corpus, in any criminal case is limited to an enquiry into the cause of commitment as disclosed by the warrant of commitment. EX PARTE MACDONALD, 3 C. C. C. 10, 27 C. S. C. R. 686.

17. **Jurisdiction of Judges in Quebec.**]—By chap. 95 of the Consolidated Statutes of Lower Canada respecting writs of habeas corpus, all persons detained on any criminal charge, have the right to demand from the court of King's bench or from the Superior Court or any Judge of any such courts, a writ of habeas corpus. But such Judges only have jurisdiction in the division or district where the applicant is confined. The application therefor must be made to the justice qualified and authorized to exercise his judicial function, resident within the district where the applicant is confined. EX PARTE TREMBAAY, 6 C. C. C. 147, Q. R. 11, K. B. 454.

18. **Jurisdiction of Quebec Supreme Court Judges.**]—1. In the Province of Quebec the Supreme Court Judges have jurisdiction in habeas corpus applications

within the district where the place of detention is. 2. Where a person is imprisoned under a sentence passed by a court having general jurisdiction, he cannot be discharged by habeas corpus, but should be left to his remedy by appeal, exceptions or writ of error. Ex Parte Goldberry, 10 C. C. C. 393.

19. **Sentence** — To Penitentiary — Inquiry by Courts of Province where Penitentiary Situate — Trial in Another Province.]—1. The Supreme Court of New Brunswick has no power on habeas corpus, or in any other proceeding to inquire into the validity or regularity of any proceedings connected with the trial of an accused person by the court of another Province. If there is any illegality in connection with such trial the accused should test validity of proceedings in the courts of the province where the trial took place. R. v. Wright, 10 C. C. C. 461.

20. **Merits of Conviction not to be Decided upon.**]—Under section 1 of chap. 95 of the Revised Statutes of Lower Canada, 1861, every person deprived of liberty on account of a criminal offence, has the right of asking for and obtaining from the court of Queen's bench or from the superior court a writ of habeas corpus, but it is not for said resepctive courts to decide whether or not as a matter of fact the person brought up on habeas corpus is guilty of the offence mentioned in the conviction. Regina v. Bougie, 3 C. C. C. 487.

21. **Order of Discharge under c. 41, Consol. Stat.** — Whether Court has Power to set Aside.]—An order of a Judge made under the Consol. Stat. c. 41, discharging a prisoner from custody, cannot be set aside or revised by the court. Ex Parte Byrne, 22 N. B. R. 427.

22. **Revising Powers of Judges of Superior Courts over Decisions of Magistrates** — Jurisdiction of Police Magistrates.]—The 29 & 30 Vic. cap. 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. Police magistrates have jurisdiction both in cities and counties. Regina v. Mosier, 4 P. R. 64.

23. **Supreme Court of Canada** — Limits of Jurisdiction.]—The jurisdiction of a Judge of the Supreme Court of Canada in matters of habeas corpus in criminal cases, is limited to an inquiry into the cause of imprisonment as disclosed by the warrant of commitment. Ex Parte James W. Macdonald, 27 S. C. C. 683.

24. **Supreme Court of Canada** — Jurisdiction.]—An application for habeas corpus was made to a Judge of the Supreme Court of Nova Scotia, who referred the matter to the court, which dismissed it. Thereupon a further application was made to Sedgwick, J., of the Supreme Court of Canada, under section 32 of the Supreme Court Act, which confers original jurisdiction in habeas corpus . :—Held, by Sedgwick, J., that though his jurisdiction under the section referred to might be co-ordinate and equal to that of a Judge of the Supreme Court of Nova Scotia, it did not extend further or constitute him a court of appeal with jurisdiction to void the decision of the Supreme Court of Nova Scotia. Re Patrick White, 31 S. C. C. 383.

25. **Supreme Court of Canada.**]—Section 51 of the Supreme Court and Exchequer Courts Act does not interfere with the inherent right which the Supreme Court, in common with every superior court, has incident to its jurisdiction, to inquire 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 section does not constitute the individual Judges of the Supreme Court 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. Per Strong, J., the words of s. 51 express-

ly giving an appeal when the writ has been refused or the prisoner remanded, must be attributed to the excessive caution of the legislature to provide all 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. IN RE SPROULE, 12 S. C. R. 140.

26. As regards habeas corpus in criminal matters, the Supreme Court has only concurrent jurisdiction with the Judges of the superior courts of the various provinces, and not an appellate jurisdiction, and there is no necessity for an appeal from the judgment of any Judge or court, or any appellate court, because the prisoner can come direct to any Judge of the Supreme Court individually, and upon that Judge refusing the writ or remanding the prisoner, he could take his appeal to the full court. IN RE BOUCHER, Cassels' Dig. 182

27. **Warrant of Commitment** — VENUE — SENTENCE — CODE SEC. 609.]—By Code sec. 609 indictment includes any record, and the venue (which means the place where the crime has been committed) need not be stated in the warrant if noted in the margin thereof. When the offence was not one for which local description was required, the jurisdiction of the court was sufficiently shown by the marginal note. R. v. SMITHEMAN, 9 C. C. C. 17, 35 C. S. C. R. 490.

VII. REMAND.

1. **Illegality of Arrest** — CODE SEC. 577-586.]—On an application for habeas corpus prisoner's affidavit disclosed that he had been arrested in Buffalo, without any warrant, and handed over to the Canadian officials and transported to Toronto without any extradition proceedings being taken. The only return to the writ was the gaoler's return, and annexed as the only cause of detention was a warrant of remand of the justice :—Held, that the court on an application for habeas corpus could not enquire into the manner or circumstances under which the accused was brought into Canada. Where the return to a writ of habeas corpus shows that a valid remand was made, notwithstanding the fact that such may have been made subsequently to the issue of the writ, it is sufficient for the purpose of detaining the prisoner. R. v. WALTON, 10 C. C. C. 269.

2. **Murder** — FORM OF WARRANT — REMAND.]—Held, that a warrant of commitment issued by a magistrate under the treaty and our statute, C. C. C. c. 89, which used the words "did wilfully, maliciously, and feloniously stab and kill" and omitted the words "murder" and "with malice aforethought" and concluded by instructing the gaoler to "there safely keep him the prisoner, until he shall be thence delivered by due course of law," did not come within the provisions of the treaty or statute and was consequently defective. IN RE ANDERSON, 11 C. P. 9.

Held, that when a prisoner was brought before the court upon a writ of habeas corpus under our statute, the warrant of commitment upon which he was detained appearing on its face to be defective, the court had no authority to remand him, such power only being charged with any offence for which he could be tried in this Province. IB.

VIII. RETURN.

1. **Custody of Children** — SUFFIENCY OF RETURN TO WRIT.]—A writ of habeas corpus was allowed,directed to the Halifax Infants' Home to produce two children, at the instance of their guardians lately appointed. A return and an amended return made to the effect that the children being of suitable age, had been, under the regulations of the institution, placed with suitable persons, who undertook to give them homes. That one had been removed to the United States, out of the jurisdiction, and that after inquiry it was found impossible to ascertain the whereabouts of the other. It appeared that four years before, the mother of these children, who were illegitimate was convicted under R. S. 5th Series, c. 95, of neglecting and ill using them, in consequence of which they were committed to the custody and guardianship of the Infants' Home. Objection being made to the above return as insufficient in not properly accounting for the children. —Held, that as the custody of the In-

fants' Home was lawful, and as their guardianship had been substituted for that of the mother, and as there was nothing illegal in the manner in which the children had been disposed of, the return was sufficient. RE MAHONEY CHILDREN, 24 N. S. R. 86.

2. **Defective Warrant.**]—The course to be taken by the court on return of a habeas corpus, shewing prisoner detained under a defective warrant in execution of a conviction of a justice of the peace discussed. ARSCOTT v. LILLEY, 11 O. R. 153.

3. **Evasive Return.**]—A writ of habeas corpus was issued directing the defendant, the patroness of a benevolent institution for destitute children, to produce certain children, alleged to have been placed by their father, the petitioner, with her in Edinburgh, Scotland, and by her illegally removed to this Province, after demand made upon her for their custody. To this defendant returned that the children were not then in her custody, possession, power or control, and that the petitioner was an unfit person to have possession of them. This return was set aside by the Judge at chambers as evasive, and an amended return was made, containing further particulars, but not justifying the legality of her course in having withheld them from the petitioner, after demand made :—Held, that inability to produce the children was no sufficient excuse for not obeying the writ when such inability was the result of previous illegal conduct, and that the amended return, should be set aside and attachment for contempt allowed to issue. But (per Ritchie, J.,) defendant might have a further opportunity of producing the children or of giving further particulars of how and when she disposed of them when she last heard from them and in whose custody, and where she believed them to be, and showing that she made every effort to obtain possession of and produce them, in obedience to the writ. REGINA v. STERLING, RE DELANEY CHILDREN, 22 N. S. R. 547.

4. **Evasive Return.**]—The writ of attachment being held in suspension for thirty days, the defendant made a third return setting forth as full particulars as were at her command, and the present addresses as she believed, of the children, also that she had instructed her solicitors to take steps for their recovery. The affidavit of the solicitors set forth that they had despatched an agent to the addresses given, but could not ascertain the whereabouts of the children. It did not appear that the agent was provided with any credentials establishing his connection with the defendant, or his right to investigate the matter :—Held, that the defendant should herself have gone to the addresses, should if necessary have advertised or used personal influence, or have invoked the law and should have omitted nothing "which mortal man might do," in order to purge her contempt. Not having done so, the writ should be executed and the defendant held to answer interrogatories. IN RE EMMA STERLING, 23 N. S. R. 195.

5. **Judge's Signature to** — RETURN BY GAOLER.]—A writ of habeas corpus should be signed by the Judge who awards the same and the return of the gaoler should certify the cause of detention. REGINA v. ST. CLAIR, 3 C. C. C. 351, 20 Occ. N. 204, 27 A. R. 308.

6. **Necessity for Certiorari** — PROCEEDINGS ON FILE.]—The mere fact of the proceedings in the court below being on the files of the court, does not do away with the necessity of a writ of certiorari to bring up the proceedings. On a motion to quash a summary conviction the writ must issue before the proceedings can be enquired into. It is the return to the writ made in due form which gives the necessary jurisdiction to revise the conviction. REX v. MACDONALD (No. 2) 5 C. C. C. 279.

7. **Return Day.**]—Held, that at common law the Judges of the superior courts of common law can order writs of habeas corpus ad subjiciendum in vacation, returnable either in term or vacation. RE HAWKINS, 3 P. R. 239.

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. IN RE SPROULE, 12 S. C. R. 140.

8. **Returnable Forthwith** — PRISONERS BROUGHT IN ONCE — WHETHER ORDERS

TO BRING IN AGAIN CAN BE MADE WITHOUT ISSUING NEW WRITS.]—Writs of habeas corpus were made returnable forthwith. The prisoners were brought into court on Tuesday, and the matter directed to be argued on the following Saturday. The same day the sheriff took the prisoners back to the gaol from which he had brought them. The writs and returns had been filed the day the prisoners had been brought in, and by order of a Judge taken off file again and returned to the sheriff :—Held, by Allen, C. J., Fisher and Duff, JJ., (Weldon and Wetmore, JJ., dissenting), that the court could direct the sheriff to bring in the bodies of the prisoners on the day set forth for the argument, without directing new writs to be issued. REGINA v. TOWER ; SAME v. MULHOLLAND, 20 N. B. R. 478.

9. **Returnable Forthwith** — PRISONERS BROUGHT IN ONCE — WHETHER ORDERS TO BRING IN AGAIN CAN BE MADE WITHOUT ISSUING NEW WRITS.]—Writs of habeas corpus were made returnable forthwith. The prisoners were brought into court on Tuesday, and the matter directed to be argued on the following Saturday. The same day the sheriff took the prisoners back to the gaol from which he had brought them. The writs and returns had been filed the day the prisoners were brought in, and by the order of a Judge taken off file again and returned to the sheriff :—Held, by Allen, C. J., Fisher and Duff, JJ. (Weldon and Wetmore, JJ., dissenting), that the court could direct the sheriff to bring in the bodies of the prisoners on the day set for in the argument, without directing new writs to issue. REGINA v. TOWER, 20 N. B. R. 478.

10. **Return** — COPY OF WARRANT.]—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. IN RE ROSS, 3 P. R. 301.

11. Held, that the person to whom a 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, 3 P. R. 301, to the contrary, doubted IN RE CARMICHAEL, 10 L. J. 325.

12. **Custody of Infants.**]—A return was made by the mother of the infants, in whose custody they were, to a writ of habeas corpus obtained by the father with the object of compelling the delivery of their custody to him. The return stated that they were all under twelve, the age mentioned in R. S. O. 1877, c. 130, s. 1 :—Held, upon demurrer, that the return must be considered in the light, not only of the common law, but of the statutory provisions with regard to the custody of infants, and that the return was sufficient in law. Re Murdoch, 9 P. R. 132, explained and followed. RE SMART INFANTS, 11 P. R. 482.

13. **Form** — FILING.]—A habeas corpus directed to a gaoler was sent to the clerk of the Crown with a return stating that he held the prisoners under a warrant of committal annexed, but was unable to produce them for want of means to pay for their conveyance. This return having been marked by the clerk, "Returned and filed," a Judge allowed these papers to be withdrawn for the purpose of having another return made. The prisoners were afterwards produced with the writ, to which the foregoing return was annexed, and another stating that the prisoners were held under the warrant already spoken of and a subsequent warrant, by which an alleged defect in the first was intended to be cured :—Held, 1. That the first return was in fact no return, merely alleging matters of excuse for not making a return. 2. That a return cannot be filed until it has been read before the Judge; and that the second return was authorized. REGINA v. RENO, 4 P. R. 281.

14. **Sheriff.**]—A return by the sheriff to the writ setting out the 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. IN RE SPROULE, 12 S. C. R. 140.

15. **Return of Two Warrants for Same Offence.**]—The return to a writ of habeas corpus disclosed two warrants of commitment for the same offence :—Held, that the return to the order was bad, because neither it nor the second commitment showed that the justice intended to amend the first warrant or substitute the second for the first. R. v. VENOT 6 C. C. C. 209.

IX. Right To.

1. **Application for** — Forum — Districts — Judges — Court of King's Bench — Consent.]—A person deprived of his liberty, who wishes to obtain the issue of a writ of habeas corpus, must make his application for such writ to any Judge who may be in the district in which the prisoner is confined, and who is qualified and authorized to exercise his judicial functions therein. 2. If there be no Judge within the limits of such district, the application for a writ of habeas corpus may be made either to a Judge in any adjoining district, or to any Judge in the city of Montreal or in the city of Quebec, according as an appeal from the district where the applicant is confined would be brought to one or the other city. 3. The court of King's bench, appeal side, has original jurisdiction at Montreal or Quebec in matters of habeas corpus with respect to any person confined in a district from which appeals are brought to one or the other city; but a Judge of the court of the King's bench has no jurisdiction to grant an order in chambers in such matter, unless it be first established that there was no Judge within the limits of the district where the prisoner is confined, when the application was made to such Judge of the court of King's bench. 4. Where a court or Judge is not vested with jurisdiction by law, the consent of the parties cannot confer jurisdiction. Ex P. Tremblay, Q. R. 11, K. B. 454.

2. **Application for Discharge**—Direction of Writ — Application was made to the Judge of the County Court for the Discharge of an Insolvent Debtor under Chapter 118 of the Revised Statutes (5th Series).]—The application was refused on the ground that the debtor had been guilty of fraud in respect of delay of payment and the disposal of his property, and the learned Judge made an order directing that he be confined in jail for a period of six months. This order was made on Saturday, the 23rd day of January, 1886, but was inadvertently dated as of the 24th (Sunday). The mistake being discovered, the learned Judge, on Monday, the 25th, made a further order, confirming the first order, and directing that the debtor be confined in jail for a period of six months from the 23rd of January for such fraud. Application was thereupon made to the court for the discharge of the debtor under a writ of habeas corpus, on the ground that he was illegally detained, the imprisonment under the execution having determined when the orders were made by the county court Judge in respect to the imprisonment for fraud, and such orders being bad :—Held, that the prisoner was not entitled to the relief sought, the execution under which he was imprisoned continuing in force until he was released by the creditor, or until the making of a valid order for his discharge under the Act, or for his further imprisonment for fraud :—Held, also, that the writ of habeas corpus should have been directed to the sheriff and not to the jailer. Weatherbee, J., dissenting. In re G. R. Johnston, 7 R. & G., N. S. R. 51, 7 C. L. T. 90.

On appeal to the Supreme Court of Canada :—Held, that the appeal must be dismissed without costs. No costs are given in habeas corpus appeals, as a general rule, in favourem libertatis. In re G. R. Johnson, 20th Feb., 1886.

3. **Arrest on Sunday** — Commitment — Proper Remedy.]—Where the commitment and recognizance taken on Sunday are sought to be attacked, the proper remedy is habeas corpus not certiorari. Ex Parte Garland, 8 C. C. C. 385, 35 N. B. R. 509.

4. **Attachment.**]—A verdict was taken in a cause of nisi prius subject to a reference, and the rule of reference was afterwards made a rule of court, and contained the usual clause against filing any bill in equity; and the defendant, against whom the award was made, did not make any motion in this court in proper time, but filed his bill in equity, for which the court granted attachments against him and his solicitor, upon which writs of habeas corpus were subsequently issued. The court refused to entertain a motion to set aside those writs or suspend proceedings upon them. Regina v. Maddock, In re Manners v. Clarke, 1 U. C. R. 322.

5. **Canada Temperance Act** — Third Offence — Invalidity of Conviction upon Second Offence.]—The accused having been convicted of a third offence under the Canada Temperance Act, and the first and second convictions having been put in evidence under s.-s. (b) sec. 115 of that Act, and it appearing that

the second conviction was void for contravention of sec. 104 as amended by c. 43 (1888,) it was held that the third conviction was bad and unwarranted by law. REX v. MACDONALD, 5 C. C. C. 97.

6. **Capias.**]—Where it appeared that the prisoner was in custody under a writ of capias, issued out of the county court, regular on its face, but which, it was contended, had been improperly issued, a Judge in chambers refused to discharge the prisoner. IN RE BIGGER, 10 L. J. 329.

7. **Costs** — JURISDICTION.]—A prisoner convicted summarily of theft by a stipendiary magistrate, having been discharged by a Judge of the county court as a Master of the Supreme Court, on the ground that he had not consented to be so tried, an order was made directing costs against B., alleged to have been the informer and prosecutor :—Held, that as the record of conviction did not disclose it, and there was only the prisoner's affidavit to show that B. was informer and prosecutor, the order as to costs was bad. This being so, B. was not bound to have appeared to the rule nisi, under which prisoner was discharged, nor were the magistrate and jailer, also served. Quære, had the county court Judge jurisdiction ? REGINA v. BOWERS, 34 N. S. R. 550.

8. **Criminal Charge.**]—29 & 30 Vict. c. 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. REGINA v. MOSIER, 4 P. R. 64.

9. **Debtor.**]—It is not illegal to issue a writ of habeas corpus to bring up a debtor in custody on an attachment for the non-payment of costs, and the sheriff cannot therefore justify an escape from the attachment on the ground that the debtor was brought up by habeas corpus by the plaintiff, and that it would have been illegal for the sheriff afterwards to detain him, and so he was permitted to leave his custody. GRAHAM v. KINGSMILL, 6 O. S. 584.

10. A deputy judge of a county court declined, on the ground that he was the partner of the plaintiff's attorney, to entertain an application by the defendant for a supersedeas because he had not been charged in execution within the term next after judgment :—Held, that the defendant was entitled to be discharged from custody under a writ of habeas corpus. REID v. DRAKE, 4 P. R. 141.

11. **Discharge of Party Re-arrested after Release.**]—Certiorari to remove a conviction for violation of the license laws in the city of Halifax quashed, on the ground that a bond had been filed instead of bail. The defendant having been released on the issue of the certiorari, and re-arrested on the original warrant after the certiorari was quashed, the court granted a rule in the nature of a habeas corpus under the statute "Of securing the liberty of the subject," on terms that defendant should bring no action. THE CITY OF HALIFAX v. LEAKE, 2 R. & G., N. S. R. 142.

12. **Discretionary Power to Refuse Writ.**]—The writ of habeas corpus will be refused if the Judge reaches the conclusion that the writ would be quashed if issued upon the admission of the facts submitted. UNITED STATES v. WEISS, 8 C. C. C. 62.

13. **Discharge of Prisoner under Writ of, Where Proceedings Irregular.**]—The court made absolute a rule nisi for a habeas corpus where it appeared that the prisoner had been arrested on an execution for penalties under the License Laws, the justices having proceeded with the cause in the absence of defendant, without an affidavit of the service of summons, although on the hearing of the rule nisi it was made to appear that the summons had actually been served. IN RE DONALD MCEACHERN, 1 R. & G., N.S.R. 321.

14. **Dispensing with Issue of Writ** — DISCHARGE OF PRISONER WITHOUT BEING BROUGHT UP — PARTIES TO BE SERVED — CONVICTION — HARD LABOUR — DUPLICITY.]—A conviction, which attaches hard labour to imprisonment in default of there being sufficient distress to levy the fine imposed, is bad. A conviction which charges an offence on two separate days, charges two distinct separate offences, and, if it be a case where s. 26 of the Summary Convictions Act applies, is bad; a warrant of commitment based on such a conviction is consequently bad. 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 discouraged 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 rules or at least be represented on its return. THE QUEEN v. FARRAR, 1 Terr. L. R. 306.

15. **Examining Proceedings.**] — The Judges of the superior courts are bound when a prisoner is brought before them under 29 & 30 Vict. c. 45 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. REGINA v. MOSIER, 4 P. R. 64.

16. **Failure to Arraign Prisoner at First Sittings of Court.**]—The mere omission to have a prisoner, who is charged with attempting to have carnal knowledge of a girl under fourteen years, arraigned for trial at the first sittings of the court at which he should have been tried, is not sufficient ground to entitle him to a discharge on a habeas corpus. R. v. WRIGHT 2 C. C. C. 83.

17. **Liquor License Act** — ARREST IN ANOTHER COUNTY — WARRANT NOT INDORSED BY JUSTICE.]—The prisoner had been arrested for an offence under the Liquor License Act and a warrant for his commitment issued, but the defendant had been arrested in another county without the warrant of commitment being backed or endorsed by a justice of the peace for that county. It was held that this was no ground for the discharge of the prisoner on habeas corpus proceedings. REX v. WHITESIDE, 8 C. C. C. 478, 4 O. W. R. 113, 237, 8 O. L. R. 622.

18. **Imposition of Fine** — DEFECTIVE DIRECTION OF PAYMENT.]—A conviction which does not contain an adjudication of forfeiture of the penalty imposed, is insufficient, and constitutes a ground for the discharge of a prisoner on habeas corpus. REGINA v. CROWELL, 2 C. C. C. 34, 18 C. L. T. 29.

19. **Infant Child** — PETITIONER — DETENTION BY ORDER OF FATHER IN REFORMATORY — APPLICATION BY MOTHER FOR WRIT OF HABEAS CORPUS — CODE SEC. 956.]—1. A writ of habeas corpus issued on the petition of an infant is not invalid for that reason, as the writ issues in the King's name, and the status of the petitioner is immaterial. 2. Detention in an institution for the purposes of disciplining a child, where the detention is by order of the father, exercising a legal right, even though unwisely, will not be interfered with by the Courts. RE A. B., 9 C. C. C. 390.

20. **Justice of the Peace** — HEARING COMMENCED BY ONE — COMMITTAL BY TWO — IRREGULARITY OF COMMITMENT.] —Accused was tried at the preliminary hearing for perjury, before one justice, and the case was adjourned, and on the next sitting a second justice joined in the hearing of the case. The result being that they committed the accused for trial : —Held, on an application for habeas corpus, that the intervention of the second justice rendered the proceedings irregular, since they both had not heard all the evidence. R. v. NUNN, 2 C. C. C. 429, 6 B. C. R. 464.

21. **Name of Accused** — TIME FOR TAKING OBJECTION TO WRONG NAME.]— Accused was convicted of selling liquor without a license, fined, and committed in default of payment. On motion for habeas corpus it was shown that her name was not Kate Wilson, under which she was convicted, but Bridget Corrigan. When called upon to plead to the charge, she entered a plea of not guilty :—Held, that having been tried and convicted under the same name, without objection being raised, it was too late to complain of a mistake, which if availed of in proper time could have been amended. The objection should have been taken before pleading. R. v. CORRIGAN, 2 C. C. C. 591, Q. R. 9, Q. B. 43.

22. **Necessity for an Affidavit of Prisoner** — INABILITY TO MAKE.]—An application for a writ of habeas corpus in a criminal matter cannot be entertained without the prisoner's affidavit or evidence of his coercion. REGINA v. BLACK, 8 C. C. C. 465.

23. **Preliminary Investigation Pending.**]—Held, that 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, 16 O. R. 228. See REGINA v. GOODMAN, 2 O. R. 468.

24. **Refusal by One Judge** — APPLICATION TO SECOND JUDGE.]—An application for discharge of prisoner on the return of a writ of habeas corpus may be made to various Judges in succession. The fact that a Judge of co-ordinate jurisdiction has refused discharge is no bar to successive applications. REX v. LAURA CARTER, 5 C. C. C. 401.

25. **Request.**]—Semble, that a prisoner is not entitled to a writ of habeas corpus under the statute of Charles unless there be "a request made in writing by him or any one on his behalf, attested by two witnesses who were present at the delivery of the same." IN RE CARMICHAEL, 1 C. L. J. 243.

26. **Res Judicata** — ALLEGATION OF NEW FACTS.]—Where a judgment refusing a writ of habeas corpus was delivered after a formal abandonment of the writ before judgment, such judgment cannot constitute a res judicata to an application for a writ of habeas corpus before another Judge. An application for habeas corpus can be renewed after it has been refused where new facts are alleged. EX PARTE GREENE, (No. 2) 7 C. C. C. 389, 22 Q. S. C. 109.

27. **Rule Nisi** — CERTIORARI OR HABEAS CORPUS.]—A rule to quash a conviction may in the first instance, be to show 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. REGINA v. COLLINS, 5 Man. L. R. 136.

28. **Second Arrest for Same Offence** — ESTOPPEL.]—The prisoner having been arrested pursuant to a warrant of committal, persuaded the constable to let him go, and furnished $100 security for his appearance when wanted. The prisoner having been arrested later on the same warrant, and his deposit returned, Held on an application for habeas corpus, that the constable's release of him having been at his request and for his benefit and accommodation, the prisoner could not be heard to now say it was illegal, and habeas corpus refused. EX PARTE DOHERTY, 5 C. C. C. 94.

29. **Sentence Dorchester one Year** — AMENDMENT OF.] — A prisoner was convicted of larceny and sentenced to one year's imprisonment in Dorchester Penitentiary. The warden refused to receive him on the ground, that the shortest period for which prisoners could be sentenced to or received at the penitentiary was two years. Prisoner was then taken to the county jail. On a motion for habeas corpus the jailor, in his return, set out the conviction for larceny and also returned that the prisoner was detained under a warrant of a justice for attempting to escape by tearing up the floor of his cell. The warrant annexed to the return was under the hand of two justices. The court refused to discharge him, and decided that he should be sentenced to imprisonment in the common jail for one year inclusive of the period for which he had already been detained. IN RE WALLACE RICE, 2 R. & G., N.S. R. 77, 1 C. L. T. 555.

30. **Substituting New Charge.**]—The defendant was brought before justices of the peace on an information charging him with the indictable offence of shooting with intent to murder, and they not finding sufficient evidence to warrant them in committing for trial, of their own motion, at the close of the case, summarily convicted the defendant for that he did "procure a revolver with intent therewith unlawfully to do injury to one J. S." It appeared by the evidence that the weapon was bought and carried and used by the defendant personally. By the Criminal Code, s. 108, it is a matter of summary conviction if one has on his person a pistol with intent therewith unlawfully to do any injury to any other person. The return to a writ of habeas corpus shewed the detention of the defendant under a warrant of commitment based upon the above conviction :—

Held, that the detention was for an offence unknown to the law; and, although the evidence and the finding shewed an offence against s. 108, it was unwarrantable to convict on a charge not formulated, as to which the evidence was not addressed, upon which the defendant was not called to make his defence, and as to which no complaint was laid; and the prisoner was therefore entitled to be discharged. REGINA v. MINES, 25 O. R. 577.

31. **Supreme Court of Canada.**]—The right to issue a writ of habeas corpus being limited by s. 51 of the Supreme and Exchequer Courts Act to "an inquiry into the cause of commitment in any criminal case under any Act of the Parliament of Canada," such writ cannot be issued in a case of murder, which is a case of common law. IN RE SPROULE, 12 S. C. R. 140.

32. **Unlawfully Killing Dog** — EXCESSIVE PUNISHMENT.]—There is no authority under sec. 501 of the Code to impose imprisonment with hard labor in default of paying the penalty, compensation and costs on a conviction for the offence of wilfully and unlawfully killing a dog, and a defendant taken into custody will be discharged upon habeas corpus. REGINA v. HORTON, 3 C. C. C. 84, 13 N. S. R. 217, 43 C. L. J. 42.

33. **Writ of Error.**]—A prisoner on conviction was sentenced to two years imprisonment in the county jail, and application was made by habeas corpus to review the sentence as illegal, in the Supreme Court :—Held, discharging the rule nisi, that after conviction by a court of superior criminal jurisdiction, habeas corpus does not apply. (In re Sproule, 12 S. C. C. 140, followed), and that the only course is by writ of error. Further (Weatherbe, J., dubitante) that the Supreme Court has undoubted jurisdiction to entertain such a proceeding, not only expressly and impliedly by statute, but also as sharing in criminal matters, the original common law jurisdiction of its prototype, the court of Queen's bench in England. And that the convicting and reviewing tribunal was theoretically one and the same court, was not an objection. (Note—Now, however, see Crim. Code, 743.) IN RE FERGUSON, 24 N. S. R. 106.

X. WARRANT OF COMMITMENT.

1. **Committal for Trial** — WARRANT OF COMMITMENT — FAILING TO ALLEGE CONVICTION — CODE SEC. 886-8.]—On application for habeas corpus of defendant who was detained under a warrant of committal for trial which failed to allege a conviction; the justice returned an amended conviction after argument :—Held, that the amended conviction could not be referred to in order to support the warrant for commitment; the warrant did come within the curative provisions of Code sec. 886. REGINA v. LALONDE, 9 C. C. C. 501, 2 Ter. L. R. 281.

2. **Customs Act** — WARRANT OF COMMITMENT.]—A warrant of commitment pursuant to a conviction under the Customs Act for smuggling, which fails to set out the expenses, costs, and charges necessary for the conveyance of the accused to gaol, in case of default in payment of the fine imposed, is invalid. The conviction should also set out that the article clandestinely landed in Canada was subject to duty. R. v. MCDONALD, 2 C. C. C. 504.

3. **Defect in** — CURATIVE EFFECT OF CODE SEC. 886.]—A warrant of commitment, though void at common law for not reciting, (where it provides for a further term of imprisonment, if default be made in payment) "unless the said sum be sooner paid," or an equivalent expression, is yet valid under the statute as being cured by the provisions of Code sec. 886. It is not necessary to state the date when imprisonment commences, as it begins to run from the time of arrest. Defendant was convicted "for that he, etc., did unlawfully distil or rectify a quantity of spirits, and did make or ferment a quantity of beer" contrary to sec. 34 of the Inland Revenue Act. :—Held, that this was not a conviction for two offences, but was valid under sec. 907 of the Code. R. v. MCDONALD, 6 C. C. C. 1.

4. **Effect of Warrant.**]—The mere fact of the warrant of commitment having been countersigned, under 31 Vict. c. 16 (D.) by the clerk of the Privy Council, does not withdraw the case from the jurisdiction of a Judge on a habeas corpus. The prisoner may contradict the return

to the writ by shewing that one of the persons who signed the warrant was not a legally qualified justice of the peace. REGINA v. BOYLE, 4 P. R. 256.

5. **Extradition** — DEFECTIVE RETURN — WARRANT OF COMMITMENT — FORGERY.]—Prisoner had been committed for extradition on the charge of uttering a forged document. On motion for a writ of habeas corpus it was held that, 1. Where the warrant of commitment is defective the court has no jurisdiction to look at the deposition returned, and on finding from them that an extradition crime has been committed, to remand the prisoner; there is no jurisdiction over the individual except such as is given by statute, and the warrant is therefore the only authority for the detention of the prisoner; there is no inherent power to remand where the warrant is defective. 2. The court has power to permit the return to a writ of habeas corpus to be amended and to allow it to be taken off the files for that purpose. 3. The proper practice on the return to a writ of habeas corpus is to bring into court and read the return, whereupon, and not before, it is to be filed in the proper office; a supplementary return of a second warrant in proper form made to remedy a defect in the original return, may be treated as one return. IN RE MURPHY, 2 C. C. C. 562, 26 O. R. 163.

6. **Second Warrant.**]—Where a prisoner is under a writ of habeas corpus discharged from close custody on the ground that the warrant of commitment charges no offence, he is not, under 31 Car. II., c. 2. s. 6, entitled to his discharge as against a subsequent warrant correctly stating the offence, upon the alleged ground that the second is for "the same offence" as the first arrest. IN RE CARMICHAEL, 1 C. L. J. 243.

7. **Summary Conviction** — COMMITMENT FOR WANT OF DISTRESS — DEFECTIVE WARRANT.]—The warrant of commitment did not show that any effort had been made to collect by distress the penalties imposed, and the imprisonment awarded could only be imposed in default of sufficient distress. On objection being taken to the validity of the warrants, held fatal. The only return to the writ before the court, was an affidavit of the gaoler verifying a copy of the warrant, but the warrant was not attached :—Held, a sufficient return. R. v. SKINNER, 9 C. C. C. 558.

8. **Summary Conviction** — NO CONVICTION ALLEGED — PRISONER DISCHARGED.]—On an application for a writ of habeas corpus, and for discharge of prisoner, detained in custody, under a warrant of a justice of the peace in Form V. Criminal Code, sec. 596 (committal for trial), the warrant did not allege a conviction but only that the accused had been charged before the justice. The conviction upon which the warrant was issued was admittedly bad, but an amended conviction was returned to the clerk by the justice after the argument :—Held, that where a warrant of commitment upon a conviction does not allege that the prisoner has been convicted of an offence, the conviction cannot be referred to in order to support the warrant. Order made discharging prisoner. Semble, that had the warrant shewn the prisoner to have been convicted of some specific offence, even though insufficiently stated, the conviction could have been referred to to support it. An application to discharge a prisoner held under a defective warrant of committal in execution will not be adjourned in order to procure the return of the conviction with a view to supporting the warrant, if the prisoner has been actually brought up on a habeas corpus, aliter where he has not been brought up. THE QUEEN v. LALONDE, 2 Terr. L. R. 281.

XI. MISCELLANEOUS.

1. **Affidavits** — LOCALITY OF OFFENCE.]—A Judge cannot, upon the return to a habeas corpus, where a warrant shews jurisdiction, try on affidavit evidence the question where the alleged offence was committed. Sections 4 and 5, R. S. O. 1887, c. 70, are not intended to apply to criminal cases where no preliminary examination has taken place. REGINA v. DEFRIES, REGINA v. TAMBLYN, 25 O. R. 645.

2. **Application by Way of** — TO DISCHARGE PRISONER DETAINED ON TELEGRAM.]—Held, that peace officer was justified in arresting and detaining person without a warrant, on telegraphic instructions from another province, where

charge of obtaining goods under false pretences had been laid against him. R. v. CLOUTIER, 2 C. C. C. 43, 12 Man. L. R. 183.

3. **Bail** — MISDEMEANOURS.]—In respect to offences which were misdemeanours before the Code, an accused is entitled to bail as of right on habeas corpus. EX PRATE FORTIER, 6 C. C. C. 191, Q. R. 13, K. B. 251.

4. **Bawdy House** — CODE SEC. 195-198.] —To constitute the offence of unlawfully keeping a bawdy house or brothel, it must be shown to be a place resorted to by persons of both sexes for the purpose of prostitution. It does not extend to a case where one woman alone receives a number of men. R. v. YOUNG, 6 C. C. C. 43, 14 Man. L. R. 58.

5. **Committal for Contempt.**]—An application by the defendant committed for contempt for a fiat or order that he be brought before the court for the purpose of moving in person for his discharge from custody was refused. Ford v. Nassau, 9 M. & W. 793, and Ford v. Graham, 10 C. B. 369, followed. Semble, a habeas corpus for the purpose would be refused, and *a fortiori* a fiat or order; for the sheriff would not be bound to obey it, and if the party were removed from prison under it, he would not in the meantime be in proper and legal custody. ROBERTS v. DONOVAN, 16 P. R. 456.

6. **Convict** — WITNESS.]—A writ of habeas corpus ad testificandum may be issued to the warden of the penitentiary to bring up a convict for life, to give testimony on behalf of the Crown in a case of murder. REGINA v. TOWNSEND, 3 L. J. 184.

7. **County Judge's Criminal Court.**]—The prisoner was convicted before a county Judge's criminal court. On an application for a habeas corpus :—Held, that the court was a court of record, and that under R. S. O. 1877, c. 70, s. 1. there was therefore no right to the writ. REGINA v. ST. DENNIS, 8 P. R. 16.

The county court Judge's criminal court being a court of record, its proceedings are not reviewable upon habeas corpus, but only upon writ of error. REGINA v. MURRAY, 28 O. R. 549.

8. **Discharge under, as Protection from Subsequent Prosecution.**]—When a prisoner is discharged on habeas corpus it is not necessary, in order for such discharge to protect him from a subsequent prosecution for the same offence, that the same state of facts should exist with respect to both the adjudication under the writ of habeas corpus and the subsequent prosecution. EX PARTE SEITZ, 3 C. C. C. 127, 8 Q. Q. B. 392.

9. **Effect of Discharge.**]—Held, in this case that the discharge of the plaintiff from custody on habeas corpus was not a quashing of the conviction. HUNTER v. GILKISON, 7 O. R. 735.

10. **Felony.**]—After a conviction of felony by a court having general jurisdiction over the offence charged, a writ of habeas corpus is an inappropriate remedy. IN RE SPROULE, 12 S. C. R. 140.

11. **Habeas Corpus Act** (**Que.**) — EFFECT OF CRIMINAL CODE.]—The Habeas Corpus Act (Que.) passed prior to confederation, having certain provisions respecting a person committed for a felony, and the Criminal Code having abolished the distinction between felony and misdemeanour, the Act applies to all cases whether felonies or misdemeanours prior to the enactment of the Criminal Code. REGINA v. H. B. CAMERON, 1 C. C. C. 169.

12. **Illegality of Preliminary Enquiry** — SPEEDY TRIAL.]—The illegality of the preliminary enquiry cannot affect the conviction of the accused under the Speedy Trials Clauses (Crim. Code) where all the requirements of the Criminal Code have been complied with at the time the prisoner is placed on his trial. REGINA v. MURRAY, 1 C. C. C. 452, 28 O. R. 549.

13. **Inland Revenue Act** — UNLAWFUL POSSESSION OF "STILL".]—Accused was convicted under sec. 159 of the Inland Revenue Act for having possession of a still without a license, and without having given notice. :—Held, that the gist of the offence was having possession of it anywhere, or at all; the intention of the Act was to prevent any unauthorized person from having possession of a still in any place, at any time or in any capacity, including that of carrier. R. v. BRENNAN, 6 C. C. C. 37, 35 N. S. R. 106.

14. **Offender in Another County.**]—Though an offender for whose arrest a

magistrate's warrant is issued be in a different county, and a prisoner for debt in close custody, he may be removed under writs of habeas corpus and recipias. REGINA v. PHIPPS, 4 L. J. 160.

15. **Order to Commit** — COUNTY COURT — "PROCESS".]—An order made by a Judge of a county court in chambers for the commitment to close custody of a party to an action in that court, for default of attendance to be re-examined as a judgment debtor; pursuant to a former order, is "process" in an action within the meaning of the exception in s. 1 of the Habeas Corpus Act, R. S. O. 1877, c. 70; and where such a party was confined under such an order, a writ of habeas corpus granted upon his complaint was quashed as having been improvidently issued. RE ANDERSON v. VANSTONE, 16 P. R. 243.

16. **Penalty** — WARRANT.]—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 of 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 pounds sterling awarded by s. 6 of the Habeas Corpus Act, 31 Car. II., c. 2 :—Held, that s. 6 of the Habeas Corpus Act 31 Car. II., c. 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. Arscott v. Lilley, 11 O. R. 153, 14 A. R. 297. SEE REGINA v. ARSCOTT, 9 O. R. 541.

17. **Previous Proceedings.**]—Writ held to have been issued improvidently when the matter in controversy had been decided and the legality of the detention of the prisoner established in previous proceedings. IN RE HALL, 32 C. P. 498, 8 A. R. 135.

18. **Prisoner Brought Up for Sentence.**]—A prisoner having been sent to the penitentiary upon a judgment which was afterwards reversed, as having been pronounced upon two counts, one of which was defective, a habeas corpus was ordered to bring him up to receive the proper judgment. CORNWALL, v. REGINA, 33 U. C. R. 106.

19. **Quarter Sessions.**]—The proper proceeding to reverse a judgment and sentence of the court of quarter sessions is by writ of error, not by certiorari and habeas corpus. REGINA v. POWELL, 21 U. C. R. 215.

20. **Question of Practice.**]—Remarks as to the inconvenience, if not danger, of making the writ of habeas corpus a mere method of appealing from other tribunals on points more of practice than affecting the merits. IN RE MUNN, 25 U. C. R. 24.

21. **Re-Commitment** —GAOLER'S FEES]—The court refused to discharge a prisoner out of custody, on the ground that the gaoler had taken him to a magistrate upon suspicion of his having committed a larceny in gaol. ROBINSON v. HALL, Tay., O. R. 482.

The court refused to commit a prisoner brought by habeas corpus from a county gaol to the custody of the sheriff of York. IB.

Held, not unreasonable for a gaoler to charge 6d. per mile both going and returning with a prisoner by habeas corpus. IB.

22. **Second Application** — DEPOSITIONS.—Application for the discharge on habeas corpus of prisoners charged with robbery committed in the United States, and, committed at Sandwich for extradition by M. McMicken, a police magistrate

appointed under 28 Vict. c. 20. The prisoners, it seemed, had been previously arrested at Toronto on the same charge, and been discharged by the local police magistrate, after a lengthened investigation before him :—Held, that this did not prevent another duly qualified officer from entertaining the charge against them on the same or on fresh materials :—Held, also, that s. 373 of 29 Vict. c. 51, did not preclude M., from taking the information and issuing his warrant in Toronto, where there was already a police magistrate for that the words of the section merely excluded him from jurisdiction there in local cases :—Held, also that the appointment of M. might well have been made under 29 Vict. c. 20, for any one of or for all the counties of Upper Canada, including Toronto, and his powers made the same as a police magistrate in cities, except as regarded purely municipal matters; and that this Act was continued by 31 Vict. c. 17, s. 4 (O.), but that as nothing was suggested impugning his authority to act, the depositions, on which the warrant issued in the United States after the arrest in Canada, were properly admitted here as evidence of criminality, their admission being within both the letter and spirit of 31 Vict. c. 94. REGINA v. MORTON, 19 C. P. 10.

23. **Sessions** — LARCENY.]—A habeas corpus will not be granted to bring up a prisoner under sentence at the sessions for larceny. REGINA v CRABBE, 11 U. C. R. 447.

24. **Substitution of Procedure.**] — A father was proceeding by habeas corpus to obtain an order awarding him the custody of his infant children :—Held, that a more comprehensive adjudication could be had upon a petition, and that there was power to direct that a petition should be substituted for the habeas corpus proceedings. Such a direction was given where it appeared to be in the interest of the infants and all concerned. This order was affirmed by the chancery division and the court of appeal with one variation, viz., the habeas corpus to run concurrently with the petition directed to be filed, and to be disposed of with it. The court of appeal held that the infants' father had waived his right to appeal from the order directing the filing of a petition by having complied with such order. Semble, but for the waiver, the appeal of the father must have succeeded; for the power given by Rule 474, O. J. Act, is to amend any defects or errors, not to compel a litigant to adopt a different form of remedy for one which is in itself competent and regular. RE SMART INFANTS, 12 P. R. 312, 435, 635.

25. **Witness** — REFUSAL TO ANSWER — COMMITTAL — CODE SEC. 585.]—To justify a magistrate in committing a witness under Code sec. 585 for refusing to answer, 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 issue. RE AYOTTE, 9 C. C. C. 133, 1 W. L. R. 79.

See also CERTIORARI — CONVICTION — EXTRADITION — WARRANT OF COMMITMENT.

HAND WRITING.

1. **Accused Witness on Own Behalf** — SPECIMEN OF WRITING MADE UNDER PROTEST.]—When a prisoner testifies on his own behalf, he cannot be ordered to write a specimen of his own handwriting to be used in evidence against him. The Canada Evidence Act does not contemplate that a prisoner could be forced to give new, real or objective evidence against himself. R. v. GRINDER, 10 C. C. C. 335.

See also EVIDENCE.

HARD LABOUR.

1. In **default of Payment of Fine and Costs** — AGGRAVATED ASSAULT.]—Upon a summary conviction for aggravated assault, the defendant can be sentenced to imprisonment with hard labour in default of payment of the fine and costs adjudged. REGINA v BURTRESS, 3 C. C. C. 536, 20 Occ. N. 368.

See also CERTIORARI — CONVICTION — HABEAS CORPUS

HAWKING AND PEDDLING.

1. **Hawker** — MORE THAN ONE SALE NECESSARY TO CONSTITUTE]—A single

act of trade is not deemed sufficient to constitute a hawker and peddler under an Act prohibiting hawking or peddling without a license. REGINA v. PHILLIPS, 7 C. C. C. 131, 35 N. B. R. 393.

2 **Hawker** — AGENT SELLING BY SAMPLE NOT WITHIN MEANING OF]—An agent for the sale of sewing machines who makes door to door visits for the purpose of selling such machines by sample, and who was the leasee of a shop, where he kept the machines stored and for sale, is neither a hawker nor a peddler. REGINA v. PHILLIPS, 7 C. C. C. 131, 35 N. B. R. 393.

4 **Hawkers** — NEGATIVING EXCEPTION] —A by-law of the county council recited the provisions of s-s. 14 of s. 583 of the Municipal Act R. S. O. 1897, c. 223, and that it was expedient to enact a by-law for the purpose mentioned in the subsection; it then went on to enact "that no person shall exercise the calling of a hawker, peddler or petty chapman in the county without a license obtained as in this by-law provided"; but the by-law contained no such exception as is mentioned in the proviso to s-s. 14, in favour of the manufacturer or producer and his servants :—Held, that the by-law was ultra vires the council, and a conviction under it was bad :—Held, also, following Regina v. McFarlane, 17 C. L. T. Occ. N. 29, that the conviction was bad because it did not negative the exception contained in the proviso, and there was no power to amend it, because the evidence did not shew whether or not the defendant's acts came within it. The conviction was therefore quashed, but costs were not given against the informant REGINA v. SMITH, 31 O. R. 224.

5 The defendant who was a traveller for a tea dealer, carried samples with him from house to house, and took orders for tea, which orders he forwarded to his employer, who sent the tea to him. The defendant then got the tea which had been forwarded in packages, and delivered it to his customers, receiving the price on delivery. On this evidence he was convicted of selling tea as a peddler without a license, contrary to a by-law which prohibited "hawkers or petty chapmen and other persons carrying on petty trades," from selling goods in the manner pointed out by the Consolidated Municipal Act, 1883, s. 495 (3) :—Held, that the defendant was not a "hawker" nor was the word pedlar used in the Act, and if he was a "petty chapman or person carrying on a petty trade," the conviction could not be supported, for he was "not carrying goods for sale." REGINA v. COUTTS, 11 O. R. 217.

6. "The Consolidated Municipal Act, 1883" (Vict. c. 18), s. 495, s.-s. 3, empowered the council of any county to pass by-laws for licensing, &c., hawkers, &c., going from place to place, &c., with any goods, wares, or merchandise for sale, and by 48 Vict. c. 40, s. i (O.) the word "hawkers" shall include all persons who, being agents for non-residents of the county sell or offer for sale tea, dry goods, jewelry, or carry or expose samples of any such goods to be afterwards delivered, &c :—Held, that electrotype ware was not jewelry within the above enactment, and a conviction for selling this without license was therefore bad, and was quashed, though the fine imposed had been paid :—Held, also, that the words "other goods wares, and merchandise," in the conviction, were too general. REGINA v. CHAYTER, 11 O. R. 217.

7 **Hawkers.**]—The defendant was convicted of selling and delivering teas as the agent of P.W., a non-resident of the county in violation of a by-law of the county of Bruce, s. 3 of which was a copy of s. 1 of 48 Vict. c. 40 (O.). The defendant, against the protest of his counsel, was called as a witness, and swore that he bought the tea in question from one W. of the city of London, and that he did not sell as the latter's agent, but on his own account; that he had formerly sold tea on commission for W. but purchased that in question for the purpose of evading the by-law. The conviction alleged that defendant was the agent of P. W., but did not state that he had not the necessary license to entitle him to do the act complained of :—Held, 1. That defendant being, under the evidence, an independent trader, and not an agent, did not come within the Consolidated Municipal Act, 1883, s. 495, s.-s. 3, nor within 48 Vict. c. 40 (O.); 2. That the conviction was defective in not stating that P. W. was non-resident within the county, and that the expression "of the city of London," was not sufficient; 3. That defendant had been improperly compelled to give evidence against himself; 4. That the

having a license is a matter of defence, and not of proof by the prosecution; 5. That the intention to evade the by-law was immaterial so long as the agency did not in fact exist. REGINA v. MCNICOL, 11 O. R. 659.

8. The defendant, a wholesale and retail dealer in teas in the county of W., where he resided, went to the county of H., and sold teas by sample to private persons there, taking their orders therefor, which were forwarded by him to county of W., and the packages of teas subsequently delivered. All the packages were sent in one parcel to H. county, and there distributed. The defendant was convicted under a by-law passed under statutes which are now R. S. O. 1887, c. 184, s. 495, s.-s. 3 (a) and (b) for carrying on a petty trade without the necessary license therefor —Held, that the conviction could not be sustained and must be quashed. REGINA v. HENDERSON, 18 O. R. 144.

9. **Peddling** — SUMMARY CONVICTION FOR—BY-LAW ULTRA VIRES.]—A summary conviction for unlawfully exercising the calling of a hawker or pedlar contrary to a by-law of the Corporation of the County of Renfrew numbered 573, purporting to be under the authority of sub-sec. 14 of sec. 583 of the Municipal Act, R.S.O., ch. 223, was held to be bad by reason of the enacting sections of the by-law being general and containing no such exception as is mentioned in the proviso to sub-sec. 14 of the Act. Such a conviction is bad if it does not negative the exception contained in the proviso. REGINA v. SMITH, 3 C.C.C. 383. 31 O.R. 224.

HIGHWAY.

See STREETS AND HIGHWAYS.

HIGH SEAS.

1. **Offence Committed on the High Seas** — FOREIGN SHIP — BRITISH SUBJECT — JURISDICTION.]—A British court has no jurisdiction to punish a foreigner for an offence committed on the high seas, in a foreign ship, against a British subject. QUEEN v. KINSMAN, James, N. S. R. 62.

HOLIDAY.

1. **Preliminary Enquiry** — NULLITY.]—A preliminary enquiry held on Dominion Day is a nullity, and a warrant of commitment thereunder is a nullity. REGINA v. MURRAY, 1 C. C. C. 452, 28 O. R. 549.

HOMICIDE.

1. **Apprehension of Grievous Bodily Harm to Wife and Family** — SELF-DEFENCE — CRIMINAL CODE, S. 476, S.-S. (f) — NEW DIRECTION OF JUDGE NOT OBJECTED TO — APPEAL.]—Where, on an indictment for murder, there was evidence that the prisoner acted under reasonable apprehension of grievous bodily harm to his wife and family, but the Judge did not direct the attention of the jury to any other ground of excuse than that of imminent peril to the prisoner's life or the lives of his family, the conviction was set aside and a new trial granted, though the prisoner's counsel did not ask at the trial to have the omission supplied. Such a conviction cannot be sustained under the Criminal Code, s. 746, s.-s. (f). REGINA v. THERIAULT, 32 N. B. R. 504.

2. **Manslaughter** — CORPORATION.] — The defendants, a corporation, were indicted for that they unlawfully neglected, without lawful excuse, to take reasonable precautions, and to use reasonable care in maintaining a bridge forming part of their railway which was used for hauling coal and carrying passengers, and that on the 17th of August, 1898, a locomotive engine and several cars, then being run along said railway and across said bridge owing to the rotten state of the timbers of the bridge, were precipitated into the valley underneath, thereby causing the death of certain persons. The defendants were found guilty, and a fine of $5,000 was inflicted by Walkem, J., at the trial:—Held, per McColl, C. J., and Martin, J. on appeal confirming the conviction, that such an indictment will lie against a corporation under s. 252, of the Code. Per Drake, and Irving, JJ. : Such an indictment will not lie against a corporation. Sections 191, 192, 213, 252, 639, and 713 of the Code considered. A corporation cannot be indicted for man-slaughter. Per McColl, C. J.: The words "grievous

bodily injury" in s. 252 have no technical meaning, and in their natural sense include injuries resulting in death. Per Drake, J.: The indictment charges the company with the death of certain persons owing to the company's neglect of duty, and is a charge of manslaughter, the punishment of which is a term of imprisonment for life, and because a corporation cannot suffer imprisonment, therefore the punishment laid down in the Code is not applicable to such a body. When death ensues the offence is no longer "grievous bodily injury," but culpable homicide. REGINA v. UNION COLLIERY COMPANY, 7 B. C. R. 247.

3. **Murder** — ABORTION.]—On a trial of the accused for murder, by committing an abortion on a girl, it appeared in evidence that a post mortem examination of the girl had been made by a medical man, which was, however, confined to the pelvic organs, and was, upon the medical evidence, inconclusive as to the cause of death, but there was other evidence pointing to the inference that death was caused by the operation. Davie, C. J., left the case to the jury, but reserved a case for the court of Criminal Appeal as to whether there was in point of law evidence to go to the jury upon which they might find that the death of the girl resulted from the criminal acts of the accused. The jury found a verdict of guilty :—Held, per McCreight, J. (Davie, C. J., and Walkem, J., concurring), that there is no rule that the cause of death must be proved by post mortem examination, and that there was evidence to go to the jury of the cause of death notwithstanding the absence of a complete post mortem examination. REGINA v. GARROW AND GREECH, 5 B. C. R. 61.

4. **Negligence** — MEDICAL AID.]— Medical attendance and remedies are necessaries within the meaning of ss. 209 and 210 of the Criminal Code, and any one legally liable to provide such is criminally responsible for neglect to do so. See also at Common Law. 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. REX v. BROOKS, 9 B. C. R. 13.

See also MANSLAUGHTER — MURDER.

HOUSE BREAKING.

1. **Breaking and Entering** — MEANING OF UNDER CODE SEC. 407.]—An entry by a porch window proved to have been partly open, even though raised higher by the accused to give entrance would not be a "breaking in" within the meaning of sec. 407, sub-sec. (b) of the Code. THE KING v. BURNS, 7 C. C. C. 95, 36 N. S. R. 257.

2. **Breaking and Entering** — MISDIRECTION — NEW TRIAL] — The defendant was convicted under s. 410 of the Criminal Code for breaking and entering the dwelling house of D., with intent to commit an assault on W. The only evidence of the breaking was that, immediately after the accused left the house, a window in the dining room and one in the back porch were found wide open, sufficiently to allow a person to pass right through, that when the family retired on the previous night the window in the dining room was entirely closed, and the window in the porch open only a few inches and resting upon a can, and that plants growing below the porch window, which had not been disturbed the previous evening, were broken, as if they had been trodden upon. Apart from this evidence it was left uncertain by which window the accused entered. The trial Judge directed the jury that the lifting of the porch window from where it rested, as well as the lifting of the dining room window, was, under the Code, a "breaking" of the dwelling house :—Held, that the direction as to the lifting of the porch window was erroneous, and that the conviction must be set aside :—Held, that the prisoner should be discharged, but that there should be a new trial. REX v. BURNS, 36 N. S. Reps. 257.

3. **Entering at Night** — ASSAULT — CODE SEC. 415.]—The prisoner was indicted inter alia for being unlawfully in a house with intent to commit an assault; the jury found that he was unlawfully in the house and committed an assault :—Held, that the jury could find him guilty of committing the assault without finding that he had the intent to commit it; the one is involved in the other; being unlawfully in and the existence of the intent concur in point of time, and the offence was therefore complete. R. v. HIGGINS, 10 C. C. C. 460.

HUSBAND AND WIFE.

1. **Competency of Evidence of** — MARITAL COMMUNICATION.]—Facts testified to by a wife which are independent facts gained by her own observation and knowledge, and not from any communication from her husband, do not come within the statute which retains her incompetency to disclose any communication made to her by her husband during marriage. GOSSELIN v. THE KING, 7 C. C. C. 139, 33 C. S. C. R. 255.

2. **Competency of Evidence of** — MARITAL COMMUNICATION.]—The husband or wife of an accused person stands in the same position as the other witnesses, and cannot refuse to answer any legal question put to them, except with respect to marital communication. GOSSELIN v. THE KING, 7 C. C.C. 139, 33 C. S. C. R. 255.

3. **Evidence.**]—Evidence is admissible on charge of failing to provide necessaries without lawful excuse, of agreement between husband and wife at time of marriage that they were to live separately until husband able to support her. REGINA v. ROBINSON, 1 C. C. C. 29, 28 O. R. 407.

4. **Evidence** — CANADA EVIDENCE ACT COMMUNICATION MADE IN PRESENCE OF WIFE AND THIRD PERSON — ADMISSIBILITY.]—The prosecution on a charge of arson, called the wife of the accused to give evidence of a communication between the husband and a third person and overheard by her. Held, that it was inadmissible under the statute since no one other than the husband could say whether it was not really intended for a communication to the wife. R. v. WALLACE, 6 C. C. C. 323.

5. **Evidence** — PRESUMPTION OF CONTINUANCE OF LIFE.]—Complainant laid a charge against her husband under sec. 210 (2) of the Criminal Code, for unlawfully refusing to supply necessaries, etc. The evidence showed that she had been previously married. Two years before her marriage with defendant, complainant had received a letter from someone stating that her former husband was dying in a hospital in Rochester, and nothing further was heard till about a year after her marriage with defendant, at which time she heard that her first husband was dead. :—Held, that there was evidence to go to the jury on which they might find that at the time of the second marriage of complainant to defendant, the complainant's first husband was dead. Conviction affirmed. R. v. HOLMES, 2 C. C. C. 132, 29 O. R. 362.

6. **Evidence** — WIFE FAILING TO TESTIFY — COMMENT BY PROSECUTING ATTORNEY.]—On trial of an indictment for theft, the prosecuting counsel, no doubt inadvertently, referred to the failure of the accused to produce his wife as a witness : —Held, on a case reserved, that this was an infraction of the Act (1893, c. 31, s. 4), which permits a wife to testify, and there must be a new trial. REGINA v. CORBY, 30 N. S. R. 330.

7. **Evidence** — WIFE OF ONE OF TWO PARTIES ON TRIAL NOT COMPETENT WITNESS FOR EITHER.]—A. and B. were tried together on a joint indictment for an assault on a peace officer, and the wife of A. was offered as a witness to disprove the charge against B. :—Held, that her evidence was properly rejected, but had the husband not been on his trial she would have been a competent witness. REGINA v. THOMPSON AND CONROY, 2 Han. 71, N. B. R.

8. **Failure to Provide for Wife and Children** — DEFENDANT AS WITNESS — MAGISTRATES' POWERS AND DUTIES — 32-33 VIC. CH. 20, SEC. 25 (D.) — 49 VIC. CH. 51, SEC. 1 (D.) — "PROSECUTION," MEANING OF IN LATTER ACT.]—Under 32-33 Vic. ch. 20, sec. 25 (D.), as amended by 49 Vic. ch. 51, sec. 1 (D.) defendant was charged by his wife, before a magistrate, with refusing to provide necessary clothing and lodging for herself and children. At the close of the case for the prosecution, defendant was tendered as a witness on his own behalf. The magistrate refused to hear his evidence, not because he was the defendant, but because he did not wish to hear evidence for the defence; and subsequently without further evidence committed him for trial : —Held, that the defendant's evidence should have been taken for the defence, that a magistrate is bound to accept such evidence in cases of this kind and give it such a weight as he thinks proper, and that the exercise of his discretion to the contrary is open to review :—Held, also, that the amended section of the Act is

intended to enlarge the powers and duties of magistrates in cases of this nature, and that the word "prosecution" therein includes the proceedings before magistrates as well as before a higher court. (October 29, 1886—Wilson, C. J.) REGINA v. MEYER, 11 P. R. 477.

9. **Failure to Provide** — CONVICTION — WIFE'S EVIDENCE — ADMISSIBILITY OF — RESERVATION OF CASE.]—Held, Armour, J., dissenting, that the evidence of a wife is inadmissible, on the prosecution of her husband for refusal to support her, under 32-33 Vic. ch. 20, sec. 25. Under Consol. Stat. U. C. ch. 112, any question of law which may have arisen on the criminal trial, may be reserved for the consideration of the justices of either of her Majesty's superior courts of common law. Quære, per Armour, J., having regard to the provisions of the Judicature Act whether a reservation to the justices of the Queen's bench division of the High Court of Justice was authorized. REGINA v. BISSELL, 1 O. R. 514.

10 **Failure to Provide** — NON-SUPPORT — CODE SEC. 207 (b).]—Where a wife has left her husband's home, and lived away from him without his consent, and without judicial authority or other valid reason, and she refuses to live with him notwithstanding the fact that he is ready and willing to receive her and maintain her according to his means and condition, his refusal, under such circumstances, to support and maintain her does not constitute an act of vagrancy under sec. 207, s.-s. (b) of the Code. In order to constitute a wilful refusal or neglect on the part of the husband maintain his wife while living apart from him, it is necessary that he should be under a legal obligation to do so. R. v. LE CLAIR, 2 C. C. C. 297.

11. **Failure to Provide Necessaries for Wife** — EVIDENCE.]—Where a husband is charged under sub-section 2 of section 210 of the Code with unlawfully omitting, without lawful excuse, to provide necessaries for his wife, in consequence of which her health is likely to become permanently injured, the words "likely to become permanently injured" have no technical meaning and in every case it is purely a question of fact whether the acts proved are such as that the health of the wife is likely, by reason of those acts, to be permanently injured. REGINA v. BOWMAN, 3 C. C. C. 410, 31 N. S. R. 403.

12. **Failure to Supply Necessaries to Wife** — EVIDENCE — INFERENCE.]—Upon a charge of failing to supply necessaries whereby the health of the wife is likely to be permanently injured, the words "likely to permanently injured" are by no means definite, and the question is left entirely to the discretion of the trial Judge. REGINA v. MCINTYRE 3 C. C. C. 413, 31 N. S. R. 422.

13. **Failure to Provide** — CODE 210 — WORDS "LIKELY TO BE PERMANENTLY INJURED.".]—The evidence showed that the prisoner being regularly in receipt of wages amounting to $6 per week, had refused to provide for his wife who was pregnant, and so incapacitated from work. On a case reserved :—Held, sustaining conviction, that this was evidence on which a Judge might find that the wife was "likely to be permanently injured" and that those words appearing in the Criminal Code have no technical meaning, the question of their application is one of fact. REGINA v. BOWMAN, 31 N. S. R. 403.

IDENTITY.

1. **Identity.**]—To identify defendant as a private prosecutor. See May v. Reid, 16 A. R. 150. JACOBS v. THE QUEEN, 16 S. C. R. 433.

IMMIGRATION.

1. **Deportation** — CHINESE IMMIGRANT IN TRANSIT TO UNITED STATES — HABEAS CORPUS.]—Where a Chinaman engaged passage with a transportation company to be forwarded to a United States port of entry for Chinese immigrants, and was accepted as a bonded passenger in transit through Canada on the condition that if rejected by the United States he would be deported to China by such transportation company, and where such Chinaman was denied admittance to the United States, it was held upon habeas corpus proceedings to test the legality of his detention whilst

being reshipped in bond to China, that the deportation was merely carrying out the contract with the transportation company. In re Lee San, 7 C. C. C. 427, 10 B. C. R. 270.

2. **Particular Offences**–Importing Alien Labourer—" Knowingly " — Conviction — Amendment — Evidence of Alienage — Person Born Abroad of British Parents.]—Conviction of the defendant for that he did unlawfully prepay the transportation, and assist and encourage the importation and immigration of an alien and a foreigner from the United States into Canada under contract and agreement made previous thereto to perform labour and service in Canada by working at a factory, quashed as clearly bad on its face, inasmuch as the conviction did not state that the defendant " knowingly " did the acts charged, nor in fact did the information charge him with having " knowingly " done them, as required under I. Edw. VII. c. 13, s. 3.—Held, also, that this omission from the information and conviction was not a mere irregularity or informality or insufficiency within the meaning of s. 889 of the Criminal Code. It was not a matter of form merely, but of substance, and a fatal and incurable defect in the conviction. Semble, also, that the person imported by the defendant was not an alien, but a British subject, the presumption from the only facts in evidence, being that he was born of British parents residing in the United States. Rex v. Hayes, 23 Occ. N. 88, 5 O.L.R. 198, 2 O.W.R. 123.

IMPRISONMENT.

1 **Date from which Time Commences to Run.**]—It is not necessary to state the date from which the imprisonment commences in the warrant of commitment, as it commences from the time of arrest R. v. McDonald, 6 C. C. C. 1.

2 **In Addition to Penalty for Corrupt Practice.**]—A Judge on a charge for corrupt practice under the Liquor License Act, 1902, (Ont) has power to adjudge imprisonment in addition to the payment of a penalty. Rex v. Carlisle, 7 C. C. C. 470, 6 O. L. R. 718, 23 Occ. N. 321.

3 **Revocation of Ticket of Leave.**]—The revocation of a "ticket of leave" by the Crown without assigning cause cannot be construed to extend the term of imprisonment, the convict by the cancellation of the license for conditional liberty being, in respect to the term of his imprisonemnt, in the same position as if such license had not been granted. Regina v. Johnson, 4 C. C. C. 178.

See also Certiorari — Conviction — Habeas Corpus.

INCAPACITY.

1. **Minor Under Fourteen Years** — Criminal Incapacity — Code Secs. 10, 174, 260.]—A minor under the age of fourteen must be conclusively presumed to be incapable physically of committing an unnatural offence, under sec. 174 of the Criminal Code. Section 10 of the Crim. Code refers solely to mental capacity to distinguish between right and wrong, and not to the physical ability to commit crime. Hence a minor cannot be convicted of Sodomy though under sec. 260 of the Crim. Code he may be charged with assault, where the act was committed against the will of the other boy. R. v. Hartlen, 2 C. C. C. 12, 30 N. S. R. 317.

INCEST.

1. **Evidence** — Destroyed Letters — Inferences — Misdirection — Substantial Miscarriage — New Trial.]—Rex v. Godson, 1 O. W. R. 250.

INDECENT ACT.

Criminal Code, S. 177 (b) — Conviction — "Wilfully" — Omission of — Habeas Corpus — Amended Conviction and Commitment Substituted — Refusal to Discharge Prisoner — Appeal to Full Court, Manitoba.]—Rex v. Barre (Man.), 2 W. L. R. 376.

2. **Crim. Code Sec. 177** — Omission of Word "Wilfully" in Information.]—The omission of the word "wilfully" in an information under sec. 177 Crim. Code, the word "unlawfully" being used therefor is fatal, and conviction quashed. Ex Parte O'Shaughnessy, 8 C. C. C. 136, 13 Q. R.. 178 K. B.

3. **Information** — "UNLAWFULLY" — "WILFULLY".]—It is not sufficient, in an information laid under s. 177 of the Criminal Code, to allege the "unlawful" commission of an indecent act; it is essential that the accused be charged with having committed it "wilfully". A commitment based on an information which merely alleges that the act was committed "unlawfully" will be quashed and the prisoner discharged. EX P. O'SHAUGHNESSY, Q. R. 13, K. B. 178.

4. **Obscene Song** — GESTURES — CRIM. CODE 177.]—The singer of a song containing indecent descriptions and accompanying same with gestures contrary to propriety is guilty of an offence under Crim. Code sec. 177. REGINA v. JOURDAN, 8 C. C. C. 337.

INDECENT ASSAULT.

1. **Included in Offence of Carnal Knowledge.**]—The acquittal of an accused tried summarily by consent before a police magistrate on a charge of having carnal knowledge of a girl under fourteen years, is a bar to a fresh charge for indecent assault as the greater offence includes the lesser of kindred kind. REX v. CAMERON, 4 C. C. C. 385.

2. **No Information** — SUMMARY TRIAL ON CONSENT.]—The accused was arrested without a warrant for indecent assault, and no information was before the magistrate :—Held, that on the prisoner's consent being given the magistrate had jurisdiction to try him summarily. REX v. MCLEAN, 5 C. C. C. 67.

3. **Verdict of, Not Disturbed by Introduction of Inadmissible Evidence of Rape at Trial.**]—Where the jury finds the accused guilty of indecent assault upon an indictment for rape, and acquits of the latter offence, the verdict will not be set aside notwithstanding the introduction of incompetent testimony on the charge of rape, provided there is sufficient evidence to sustain the verdict. REGINA v. GRAHAM, 3 C. C. C. 22, 31 O. R. 77.

See also ASSAULT.

INDECENT PERFORMANCE.

1. **Crim. Code 179 A** — BALLET DANCING — INDECENCY.]—The conduct of a female singer at a public performance in addressing the words of her song to the complainant cannot be considered as constituting an offence against sec. 179 A of the Crim. Code (Crim. Code Amendment Act, 1903), nor does the wearing of a stage costume usually worn by ballet dancers, and the ordinary ballet-dancing constitute an indecent representation within this section. REX v. M'AULIFFE, 8 C. C. C. 21.

INDIAN ACT.

1. **"Clerk, Servant or Agent"** — HOTEL COOK.]—An hotel cook is not a clerk, servant, or agent within the Indian Act, so as to render the hotel-keeper liable for a sale, without his knowledge, of liquor to an Indian. REX v. MICHAEL GEE, 5 C. C. C. 148.

2. **Halfbreed** — MEANING OF "INDIAN]—The Indian Act R. S. (1886) c. 43, defines (s. 2. h) "Indian" as meaning inter alia "any male person of Indian blood reputed to belong to a particular band" :—Held, 1. Against the contention that "of Indian blood" means of full Indian blood, or at least of Indian blood ex parte paterna—that a half breed of Indian blood ex parte materna is "of Indian blood." 2. Against the contention that the defendant having been shewn to have actually belonged to a particular band, this disproved or was insufficient to prove, that he was reputed to belong thereto—that the intention of the Act is to make proof of mere repute sufficient evidence of actual membership in the band. 3. Against the contention that by virtue of s. 11 the mother of the defendant by her marriage to his father, who was a white man, ceased to be an Indian, and that therefore the defendant was not a person of Indian blood—that while the mother lost her character of an Indian by such marriage, except as stated in that section, it did not affect her blood which she transmitted to her son. THE QUEEN v. HOWSON, 1 Terr. L. R. 492.

3. **Intoxicant** — SALE — INDIAN — HALFBREED — MENS REA — CONSTRUCTION OF STATUTES.]—Section 94 of the Indian Act (R. S. C. 1886, c. 43) provides that "Every person who sells, exchanges with, barters, supplies or gives to an Indian or non-treaty Indian, any intoxicant....shall on summary conviction.... be liable to imprisonment for a term not exceeding six months" :—Held, following Regina v. Howson, that a half-breed who has "taken treaty" is an Indian within the meaning of the Indian Act. A conviction of a person, licensed to sell liquor, for the sale of an intoxicant to such a half-breed was however quashed because the licensee did not know and had no means of knowing that the half-breed shared in Indian treaty payments. Mens rea must be shown. REGINA V. MELLON, 5 Terr. L. R. 301.

INDICTMENT.

I. AMENDMENT.
II. INDORSEMENT.
III. JOINT INDICTMENT.
IV. JURISDICTION.
V. MOTION TO QUASH.
VI. PREFERMENT OF.
VII. SEPARATE OFFENCES.
VIII. SUFFICIENCY OF.
IX. VARIANCE.
X. MISCELLANEOUS.

I. AMENDMENT.

1. **Amendment.**]—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 taken the indictment was amended, by stating the goods to be the property of the mother and no further evidence of her administrative character was given, the county court Judge holding the evidence of R. M. sufficient, and not leaving any question as to the property to the jury. On a case reserved :— Held, 1 That there was ample evidence of possession in R. M. to support the indictment without amendment; 2. That the Judge had power to amend under C. S. C. c. 99 s. 78; 3. that the conviction on the amended indictment could not be sustained, there being no evidence of the mother's representative character; not any question of ownership by her, apart from such character, left to the jury. REGINA V. JACKSON 19 C. P. 280.

2. **Amendment of** — WHERE NATURE OF TRANSACTION UNALTERED.]—An amendment of an indictment is allowable, if the transaction is not altered by the amendment, but if the amendment would substitute a different transaction from that alleged, or would render a different plea necessary, it ought not to be made. REGINA V. WEIR, 3 C. C. C. 262.

3. **Arson.**] — 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 were wanting and an amendment was allowed by striking out the words "with intent to defraud." The evidence showed that different persons were interested as mortgagees of the building, a large hotel, and J. H. 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. They found a verdict of guilty :—Held, that the amendment was authorized and proper, and the conviction was warranted by the evidence. REGINA V. CRONIN, 36 U. C. R. 342.

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. IB.

"The merits of the case," with reference to amendments, under 32 & 33 Vict. c. 29, s. 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. IB.

4. **Different Charges.**—WITHDRAWAL OF ONE.]—An indictnent which combines a charge of failure to provide necessaries (s. 210), with a charge of causing grievous bodily harm with intent to murder, and the former charge being abandoned and

withdrawn from the jury, is sufficient to sustain a verdict upon the indictment generally, without specifying the offence. REGINA v. LA PIERRE, 1 C. C. C. 413.

5. **New Charge from that on Which Committed** — FALSE PRETENCE — AMENDMENT — CODE SEC. 641 AND 723.]— Prisoner was charged before the magistrate with stealing 2200 bushels of beans, the property of one Stevens, and was committed for trial on that charge. At the assizes an indictment was preferred not for stealing, but for obtaining from the prosecutor by false pretences two cheques, the false pretence being "that there was then a large quantity of beans to wit, 2680 bushels, the property of said Stevens," etc. A motion to quash was made at the trial and refused. An amendment was allowed by striking out the words "a large quantity of beans, to wit" :—Held, on a case reserved, that the indictment for false pretences would lie, notwithstanding that the commitment was on a charge of stealing, where as in this case, the evidence at the preliminary hearing and at the trial, sustained a charge of false pretences; that the amendment was properly allowed, since the addition of the words struck out merely operated as unnecessarily setting out in what the false pretences consisted, and could not therefore render the indictment liable to be quashed as contrary to the provision of sec. 641, that on the question of prejudice, it must be taken that the trial Judge was of the opinion that the defence was not misled or prejudiced by the variance between the evidence given and the charge in the indictment; and that the question was therefore not open on the case reserved; that in any event on the material, there was no evidence of prejudice. R. v. PATTERSON, 2 C. C. C. 339, 26 O. R. 656.

6. **Previous Acquittal of Principal Felon** —WHEN NO DEFENCE — INDICTMENT — AMENDMENT.]—On the trial of the prisoner on an indictment charging him with receiving property which one M. had feloniously stolen, etc., the evidence showed that he had stolen the property, and that the prisoner was guilty of receiving the same, knowing it to have been stolen. For the defence it was proved that M. had been previously tried on a charge of stealing the same property and acquitted. The counsel for the prosecution then applied to strike out of the indictment the allegation that M. had stolen the property, and to insert the words "some evil-disposed person," etc., which the Judge allowed :—Held, 1st. That the record of the previous acquittal of M. formed no defence on the trial of this indictment, and was properly received in evidence. 2nd. That the amendment was improperly allowed. REGINA v. FERGUSON, 20 N. B. R. 259.

7. **Use of Word "Feloniously"** — INSTEAD OF WORDS IN ACT — OBJECTION, WHEN TO BE TAKEN — AMENDMENT.]— An indictment for doing grievous bodily harm, which alleged that the prisoner did "feloniously stab, cut, wound," etc., instead of alleging, in the terms of the 17th section of 32 & 33 Vict. c. 20, that he did "unlawfully and maliciously" stab, etc., is good. A defective indictment is amendable under 32 & 33 Vict. c. 20, s. 32, and any objection to it for defect apparent on the face of it must be taken by demurrer or motion to quash the indictment before the defendant has pleaded, and not afterwards. REGINA v. FLYNN, 2 P. & B., N. B. R. 321.

8. Where a bridge was wrongly described in an indictment as being in two townships :—Held, that though this could have been amended at the trial it could not be amended on a motion to set aside the verdict or for a new trial. REGINA v. COUNTY OF CARLTON, 1 O. R. 277.

II. INDORSEMENT.

1. **Grand Jury** — OMISSION TO ENDORSE NAMES OF EVERY WITNESS — CODE SEC. 645 DIRECTORY.]—The requirement of sec. 645 that the names of all witnesses examined by the grand jury shall be endorsed on the indictment is directory only. But the Court may summon the grand jury, and have the names omitted endorsed on the indictment, and initialled so as to give the accused the full benefit of notice of the witnesses who appeared against him. R. v. HOLMES, 6 C. C. C. 402, 9 B. C. R. 294.

2. **Initialing Names of Witnesses Sworn by Grand Jury not Essential.**]—Section 645 of the Code specifying that the foreman of the grand jury, or any member of the

grand jury so acting for him, shall initial the names of each witness, sworn and examined in the indictment, is directory only. REGINA v. TOWNSEND, 3 C. C. C. 29, 28 N. S. R. 468.

3. **Indorsing Names of Witnesses on Back.**]—The provisions of s. 645 of the Criminal Code requiring the names of all witnesses examined by the grand jury to be indorsed on the bill of indictment, are directory only, and an omission so to endorse does not invalidate the indictment. REX v. HOLMES, 9 B. C. R. 294.

4. **Law in Nova Scotia as to Endorsement of.**]—Sec. 760 of the Code to the effect that indictments shall not be made out except in Halifax, until the grand jury so directs, does not make it necessary in Nova Scotia (Halifax excepted) that the expression "a true bill" with the signature of the foreman should be endorsed on the indictment, the signature of the foreman alone indicating a true bill REGINA v. TOWNSEND, 3 C. C. C. 29, 28 N. S. R. 468.

5. **Not Indorsed "a True Bill".**]—Section 760 of the Code provides that in this Province a calendar of the criminal cases shall be sent to the clerk of the Crown to the grand jury, in each term, together with the depositions taken in each case, etc., and no indictment, except in the county of Halifax, shall be made out until the grand jury so directs. In this case the indictment was indorsed with the name of the cause and with the name of the foreman of the grand jury, and over the name of the foreman the words "indictment for assault on a peace officer, and for resisting and preventing apprehension and detainer." The words "a true bill" did not appear :—Held, that inasmuch as the indictment could not exist until found by the grand jury, and drawn up by its direction, nothing but "a true bill" could be presented, consequently, the words "a true bill" were unnecessary. (Townsend and Meagher, J.J., dissenting). Semble, it is otherwise in the county of Halifax. REGINA v. TOWNSHEND & WHITING, 28 N. S. R. 468.

6. **Witnesses' Names not Initialed.**]—By s. 645 of the Code, the name of every witness examined or intended to be examined shall be indorsed on the indictment and initialed by the foreman of the grand jury. By s. 760, in the Province of Nova Scotia outside of Halifax, no indictment shall be prepared until directed by the Grand Jury In this case, originating outside of Halifax, the names of the witnesses appeared on the indictment, but were not initialed by the foreman of the grand jury:—Held, that the intention of s. 645 was that the names of the witnesses to be examined should be supplied to the grand jury by being indorsed on the indictment, and the initialing was for the purpose of showing which of them had been examined prior to the finding of the bill. That s. 760, under which, outside of Halifax, no indictment could be prepared beforehand it was unnecessary to show by initialing which of the witnesses had been examined, though it might be necessary that the names should be indorsed thereon, and that the names appearing in the document or record by which they had been conveyed to the Grand Jury should be initialed to show which of them had been examined. Townshend & Meagher, J.J., dissenting. Semble, the usual practice applies to the County of Halifax. REGINA v. TOWNSHEND & WHITING, 28 N.S.R. 468.

III. JOINT INDICTMENTS.

1. **Against Several Jointly** — RIGHT TO SEPARATE TRIAL.]—Where several persons are indicted jointly, the Crown always has the option to try them either together or separately; but the defendant can demand as a matter of right to be tried separately. The presiding Judge may, in his discretion, grant separate trials upon good grounds being shown. REGINA v. WEIR, 3 C. C. C. 351, Q. R. 8, Q. B. 521.

2. **Alias Dictus.**]—Where two or more names are laid in an indictment under an alias dictus, it is not necessary to prove them all. JACOBS v. THE QUEEN, 16 S. C. R. 433.

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, that this variance between the indictment and the evidence did not invalidate the conviction of J. for manslaughter. IB.

3. **Conspiracy** — Joining Conspirators.]—One conspirator may be indicted without joining the others although within the jurisdiction. Regina v. Frawley, 1 C. C. C. 253, 25 O. R. 431.

4. **Evidence** — Right of Co-Defendant to Cross-Examine.]—Upon a joint indictment, the evidence adduced by the witnesses for any one of the defendants is effective as regards the others, either beneficially or adversely, and, therefore, before the counsel for the prosecution cross-examines, each of the other defendants has the right to cross-examine such witnesses, and in so doing to bring out fresh facts which may be advantageous for his defence. Rex v. Barsalon, 4 C. C. C. 446.

5. **Joinder of Counts and Defendants.**]—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. Regina v. Tisdale, 20 U. C. R. 272.

6. **Joinder of Counts and Defendants.**]—It is not a misjoinder of counts to add allegations for a previous conviction for misdemeanour as counts, to a count for larceny; and the question, at all events can only be raised by demurrer or motion to quash the indictment, under 32 & 33 Vict. c. 29, s. 32, (d); and where there had been a demurrer to such allegations 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 suggeston that there is misjoinder of counts. Regina v. Mason, 22 C. P. 246.

7. **Joinder of Counts and Defendants.**]—The prisoner in this case was indicted on two sets of counts, one charging him as a citizen of the United States, the other as a subject of her Majesty. The learned Judge at the trial refused to put the Crown to an election between the two sets of counts, and the court upheld his ruling. Regina v. School, 26 U. C. R. 212.

8. **Joinder of Counts and Defendants.**]—An indictment charging a misdemeanour against a registrar and his deputy jointly is good if the facts establish 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. Regina v. Benjamin, 4 C. P. 179.

9. **Order of Defence on Joint Prosecution.**]—Upon a joint indictment, the order of the defence is left generally to the discretion of the Judge. Where the offence charged is the same respecting all the accused, the order of defence follows the order in which the defendants are named in the indictment, and where there are different degrees of criminality, the defendants are called upon for their defence according to the nature of the charge against them individually, as disclosed by the indictment, or the evidence of the prosecution or both. Rex v. Barsalon, 4 C. C. C. 446.

IV. Jurisdiction.

1. **Assault** — Warrant — Where Irregular — Justification to Officer — Attachment.]—A prisoner was found guilty of an indictment charging that he made an assault upon A., "and him, the said A. did beat, wound and ill-treat," etc. There was no evidence of any wounding:—Held, by Weldon, Wetmore, and King, JJ., that the indictment was substantially one for a common assault and that the conviction was right. Where a county court has jurisdiction to issue a warrant of commitment for contempt under the Consol. Stat. c. 38, ss. 20-22, the warrant, though irregular, is a justification to the officer for arresting the party under it, and he is guilty of an assault if he resists the officer. S. was served with an order to appear before a commissioner to be examined under the Consol. Stat. c. 38, s. 20, and neglected to appear. A notice was afterwards served upon him that an application would be made to the county court on a certain day for an attachment against him for contempt in disobeying the order of the commissioner. S. did not appear in the county court pursuant to this notice, and the Judge thereupon ordered an attachment to issue against him, directing him to be imprisoned for thirty days for his contempt:—Held, per Weldon, Wetmore and King, JJ., (Palmer, J., dissenting), That the county court had power to issue the attachment—that the direction in it

to imprison S. for thirty days was at most an irregularity; and that he was not justified in resisting the officer in executing it :—Held, per Palmer, J., that the attachment was a nullity; that the court had no authority to order S. to be imprisoned for thirty days; and that he was justified in resisting his arrest. REGINA v. SHANNON, 23 N. B. R. 1.

2. **Indictment for Obtaining Goods by False Pretences** — WHERE RECEIVED IN ONE COUNTY BY ORDER SENT BY TELEGRAM TO THE SHIPPER IN ANOTHER COUNTY — JURISDICTION OF COUNTY COURT OF LATTER COUNTY TO TRY THE OFFENCE.]—S., residing in the county of Carleton, ordered by telegram goods from G. in the county of Charlotte. The goods were shipped by G. from Charlotte, and received by S. in Carleton. An indictment having been preferred against S. in the county court of Charlotte for obtaining the goods by false pretences, on an application for a prohibition :—Held, that as S., by ordering the goods by telegram, had made the telegraph his agent, the crime was partially committed in the county of Charlotte, and the county court of that county had jurisdiction. EX PARTE SLIPP, 32 N. B. R. 4.

3. **Pending in County Court** — EFFECT OF, ON SUBSEQUENT INDICTMENT IN CIRCUIT COURT — CHANGE OF VENUE — 32 & 33 VICT. c.29, s. 11 (CRIM. CODE 651).]—A prior indictment found in a county court against a prisoner, the trial of which had been adjourned to a subsequent term, does not deprive a circuit court, held before that term, of the power to entertain and try an indictment against him for the same offence, or to order under 32 & 33 Vict. c. 29, s. 11, the trial to be proceeded with at a circuit court in some other county. REGINA v. MARSHALL, 31 N. B. R. 390.

V. MOTION TO QUASH.

1. **After Arraignment.**]—Where an accused has been arraigned and pleaded not guilty, a motion to quash the indictment can be made, as such arraignment and pleading is not tantamount to the accused being "given in charge to the jury," when the jury has not been sworn. REGINA v. LEPINE, 4 C. C. C. 145.

2. **Agent of Prosecutor on Grand Jury.**]—The defendants were indicted for conspiracy to prevent C. from recovering his rents. W., agent of C., was on the grand jury which found a true bill. A motion was made to quash the indictment on the ground that W's. 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 indictment must be quashed. R. v. GORBETT, 1 P. E. I. R. 262.

3. **Application to Quash.**]—An application to the court on the part of a defendant to quash an indictment will be refused unless the defect is clear and obvious. The defendant, by pleading to the indictment, will exclude himself from having his application entertained. Where the defendant has had an opportunity to move to quash the indictment when the cause was called for trial, and before the jury was sworn, but has neglected to to avail himself of it, he is put in no better position, as regards his application, but the jury failing to agree on a verdict and being discharged in consequence. QUEEN v. WALLACE, 1 N. S. D. 382.

4. **Constitution Grand Jury** — CODE SEC. 656.]—Where the trial Judge has refused a motion to quash an indictment made on the ground of the invalid constitution of the grand jury, a further motion cannot be entertained, an appeal being precluded by Code Sec. 656. R. v. FOUQUIT, 10 C. C. C. 257.

5. **Conventional Ending Omitted** — CODE SEC. 610, 611, 629.]—Prisoner's counsel moved to quash an indictment laid under sec. 413 and 414, for unlawfully breaking and entering a shop with intent to steal, on the ground that the usual ending, "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, was omitted." :—Held, that the indictment was sufficient notwithstanding the omission. REGINA v. DOYLE 2 C. C. C. 335, 27 N. S. R. 294.

6. **Demurrer to Indictment.**]—An indictment was found against the defendants in the high court of justice, at its sittings of oyer and terminer and gaol delivery, and on being called upon to plead, the defendants demurred to the

indictment. A writ of certiorari was subsequently obtained by the defendants, in obedience to which the indictment, demurrer, and joinder were removed to the Queen's bench division. Upon the return, the Crown, took out a side-bar rule for a concilium, and the demurrer was set down for argument. A motion was made by the defendants to set aside the proceedings of the Crown, on the ground that they should have been called upon to appear and plead de novo in this division :—Held, that the court of assize of oyer and terminer and general gaol delivery is now, by virtue of the Judicature Act, the high court of justice; that the indictment was found, and the defendants appeared and demurred thereto in the high court of justice; and that it was not necessary to plead de novo to the indictment. REGINA v. BUNTING, 7 O. R. 118.

7. **Failure to Set Out Statutory Words** — QUASHING SAME.]—An indictment of theft under a power of attorney which omitted certain statutory words, but of which particulars were ordered, will not be quashed as such omission is only a partial one, and particulars had been ordered. REGINA v. FULTON, 5 C. C. C. 36, Q. R. 10, Q. B. 1.

8. **Jury** — PEREMPTORY CHALLENGES.] —The defendant was indicted under ss. 241 and 265 of the Criminal Code on two counts charging (1) that he in the city of Halifax on the 13th November, 1903, with intent to do grievous bodily harm to one W., did unlawfully wound the said W., and (2) that he did in the city of Halifax on the 13th November, 1903, unlawfully assault one W. After arraignment and before pleading to the indictment, the prisoner's counsel moved to quash it, on the ground that the clerk of the Crown had not sent the depositions taken on the prisoner's preliminary examination, before the grand jury of the county of Halifax, as required by s. 760 of the Criminal Code. When the jury were being sworn, the prisoner claimed the right to 16 peremptory challenges, on the ground that these counts would, before the Code, have been a felony and misdemeanour respectively, and, as s. 626 (1) and (2) of the Criminal Code abrogated the common law rule as to their non-joinder, he was, under the above section, being tried on two indictments :—Held, that the indictment was properly found. 2. That the prisoner was entitled under s. 668 of the Criminal Code only to 12 peremptory challenges, being the largest number allowed him on the first count of the indictment, it not being necessary for the Crown to add a count for common assault in order to get a conviction for that offence, if the evidence warranted it. The prisoner was then tried and acquitted on both counts in the indictment. REX v. TURPIN, 24 Occ. N. 183.

9. **Grand Jury Irregularly Sworn** — USE OF DEPOSITIONS — CODE SEC. 649-656.]—1. It was held a ground for quashing an indictment where the foreman of the grand jury was sworn separately from the other jurors, and the rest were afterwards called up from different parts of the room in groups of three and sworn on the same oath as the foreman, without the substance of the oath being repeated. 2. The provision of sec. 645 requiring the foreman of the grand jury to initial the names of the witnesses examined on the indictment is imperative. R. v. BELANGER, 6 C. C. C. 295, 12 Que. K. B. 69.

10. **Grand Jury**—PRESENCE OF UNSWORN JUROR — PRESENTMENT OF INDICTMENT.]—Eleven jurors were regularly summoned and sworn in the morning. The twelfth had been summoned for the afternoon and he entered the grand jury room where the others were in secret session, without having been sworn. They all, at the call of the clerk, entered the court room to make any presentments they might have. It was then discovered that the twelfth juror had not been sworn. He was ordered to leave and the others to retire to reconsider their presentments. Shortly after they returned and presented the present indictment moved against :—Held, that the mere presence of an authorized person in the grand jury room while they were deliberating did not invalidate the indictment; it was not shown that any prejudice resulted to the accused. R. v. KELLY, 9 C. C. C. 130.

11. **Omission of Essential Averment.**]—When a defect in an indictment consists in the omission of an essential averment, the indictment must, on the application of the defendant be quashed, but if the motion to quash is made only for a formal defect apparent on its face, as if an aver-

ment should be defective, or the charge should be imperfectly stated, the court may amend the indictment and proceed with the trial. REGINA v. WEIR, 3 C. C. C. 155.

12. **Patent Defect.**]—The court will not arrest judgment after verdict, or reverse judgment in error, for any defect patent on the face of the indictment, as by 32 & 33 Vict. c. 29, s. 32, objection to such defect must be taken by demurrer or by motion to quash the indictment. REGINA v. MASON, 22 C. P. 246.

An indictment describing an offence within 32 & 33 Vict. c. 21, s. 18, as feloniously stealing an information taken in a police court is sufficient after verdict. IB.

13. **Practice in Objecting to Indictment Against a Corporation.**]—Preliminary objection to an indictment against a corporation for maintaining a nuisance to be raised by demurrer, and not by motion to quash. REGINA v. TORONTO RAILWAY CO., 4 C. C. C. 4.

14. **Preferment of by Crown Officer** — WHETHER ATTENDANCE OF PRIVATE PROSECUTOR NECESSARY — SEC. 641.]—The attendance before the grand jury of a private prosecutor, bound over by recognizance in the usual way to prosecute, under Code Sec. 641 is not necessary unless his presence may be required to give evidence. A Crown prosecutor sufficiently represents a private prosecutor to prefer a valid bill of indictment in such a case without requiring the attendance of the private prosecutor. The time to make objection to an indictment for want of authority in its preferment under sec. 641 is before the prisoner is given in charge to the jury. It is too late afterwards to give effect to such an objection. R. v. HAMILTON, 2 C. C. C. 179, 30 N. S. R. 322.

15. **Quashing for Defect in Substance** — LIBEL — NECESSARY AVERMENT OMITTED]—An indictment must state the charge in clear and precise language; it must contain the averment of every fact or circumstance necessary to constitute the offence charged, and must clearly show some violation of the law; it must state every element constituting the crime designed to be charged. The omission of any necessary ingredient vitiates the indictment. Where the motion to quash is for a formal defect the court may order an amendment; but when the motion to quash is founded on the total absence of a necessary ingredient, so that the indictment charges no offence in law, it must be set aside and quashed. In such case, however, a new bill may be preferred. Defects in matter of substance are not amendable. It is an essential ingredient of the offence of publishing a defamatory libel that such is likely "to injure the reputation of the person libelled by exposing him to hatred, contempt, or ridicule, or that it is designed to insult him. The omission to state such averment is fatal. R. v. CAMERON, 2 C. C. C. 173.

VI. PREFERMENT OF.

1. **Attorney-General's Authority to Prefer Must Specify Offence.**]—On an indictment preferred by the direction or the written consent of the Attorney-General, it is necessary that the written authority should specify the offence in the particular case in which an indictment is directed to be preferred, and it will not do to direct the counsel to prefer bills in all cases which may arise. REGINA v. TOWNSHEND, 3 C. C. C. 29, 28 N. S. R. 468.

2. **Authority to Prefer Indictment.**]—Defendant was committed for trial on a charge of assaulting W., who was bound over in regular form to prosecute. At the next term the grand jury found an indictment. W. was not present, and was not examined as a witness. The Attorney-General was not present, and no one had any special directions from him to prefer an indictment. The point was reserved as to whether the indictment should not be quashed as not preferred, by anyone authorized under Code 641. Under the Provincial Act of 1887, c. 6, crimes such as that for which defendant was indicted, are prosecuted by an officer appointed by the Attorney-General at each term of the court, or in default of such appointment, by the court :—Held, per Townshend and Ritchie, JJ., (McDonald C. J., concurring), that under these circumstances the presence of the prosecutor was not necessary, and no special direction from the Attorney-General, or written consent of the Judge, or order of the court was necessary to make the indictment valid. Quære, does Code 641 apply elsewhere in the Province than in Halifax county ? Per Weatherbe, J., and Graham, E. J., (Henry, J., concurring)

that the indictment not having been preferred in accordance with s. 641, the conviction was bad and should be quashed. REGINA v. HAMILTON, 31 N. S. R. 322.

3. **By Private Prosecutor** — RIGHT TO APPEAR BEFORE GRAND JURY — SECURITY FOR COSTS — CODE SEC. 595-641.]—One Lee Park prosecuted the accused, on a charge of robbery. The magistrate at the preliminary inquiry dismissed the case, and the prosecutor was bound over at his request to prosecute the accused at the next term of the court of King's Bench. On the opening day counsel for the prosecutor having prepared an indictment and secured the signature of the clerk of the Crown to it, without notice to the Crown officers or leave of the court, went before the grand jury and examined witnesses. A true bill was reported. On motion to quash :—Held, that sec. 641 allows a private prosecutor bound over to prosecute to appear before the grand jury according to the practice of the courts governing such appearances; that no rule in that respect obtains in the Montreal district, the recognized practice being that no one except a substitute of the Attorney-General or some one by leave of the Judge shall appear before the grand jury. R. v. HOO YOKE, 10 C. C. C. 211.

4. **Consent of Judge to the Preferring of.**]—Where a Judge of the criminal court having jurisdiction in the matter, authorized the submission of indictments by an indorsement written on their face in the following words : " I hereby direct that this indictment be submitted to the grand jury," the objection that such authorization was a direction or order, and not the written consent required by sec. 641 of the Code was disallowed. REGINA v. WEIR, 3 C. C. C. 155.

5. **Court Will Not Order Where Magistrate Cannot Agree to Commit.**]—Where upon a preliminary enquiry two magistrates could not agree whether there was a prima facie case or not, a superior court will not order an indictment to be preferred, the responsibility for an indictment under such circumstances resting on the Crown in its executive capacity. EX PARTE HANNING, 4 C. C. C. 203.

6. **Delegation of Authority by Attorney-General** — 32 AND 33 VICT., CAP. 29, SEC. 28 — OBTAINING MONEY BY FALSE PRETENCES.]—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." 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 Vic., c. 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, on appeal, reversing the judgment of the court of Queen's bench, that under 32 and 33 Vic., c. 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. ABRAHAMS v. THE QUEEN, 6 S. C. R. 10.

7. **Particularity** — STATEMENT OF OFFENCE — PREFERRING OF INDICTMENT — ORDER — GRAND JURY.]—Where a person is charged with an offence, the indictment should describe it with such particularity as will enable the accused to know exactly what he has to meet. An indictment which stated the offence in the language of the section of the Criminal Code supposed to have been violated, without setting out the particular facts constituting the offence, was quashed, for want of particularity, and also because it was not preferred in accordance with s. 641 of the Code. The Attorney-General did not in person or even by his authority prefer the indictment, and the informal direction of a Judge to the foreman of the grand jury, recognized by a formal order after the indictment had actually been preferred, was insufficient. REX v. BECKWITH, 23 Occ. N. 307.

8. **Preferring of, on Judge's Order.**]—Where an indictment is preferred upon the order of a Judge, section 641 of the Code requires the order to be made before the indictment is preferred. Rex v. BECKWITH, 7 C. C. C. 450.

9. **Preferment After Election.**]—A bill of indictment cannot be preferred against a person in custody who has legally elected for speedy trial. R. v. KOMIENSKY, 6 C. C. C. 524.

10. **Preferment of Direct** — WITHOUT PRELIMINARY INQUIRY — NO RIGHT TO SPEEDY TRIAL.]—Where an indictment has been preferred by direction of Attorney General or by order of a court of competent criminal jurisdiction, without any preliminary hearing or committal having taken place, the accused possesses no statutory right to change the forum by electing for a speedy trial. REX v. WENER, 6 C. C. C. 406.

11. **Preferred Where Preliminary Inquiry is Undecided.**]—Where justices have held a preliminary inquiry on an indictable offence, but have not announced their decision thereon, the accused party has no absolute right to a decision by such justices, and there is nothing to prohibit the preferring of an indictment for the same offence. REGINA v. WEIR, 3 C. C. C. 155.

12. **Procedure in Territories** — FOUNDATION OF CHARGE — GRAND JURY — CORONER'S INQUEST — APPLICABILITY OF IMPERIAL LAWS.]—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, 1 Terr. L. R. 4.

13. **Prosecuting Attorney** — POWER TO PREFER AN INDICTMENT.]—The Act of 1887, c. 6, s. 2, provides that the Attorney-General shall appoint a competent barrister at each sittings in each county by instructions under his hand, which, on presentation to the presiding Judge, "shall, in the absence of the Attorney-General, be a sufficient authority for any barrister to take charge, on behalf of the Crown, of criminal business, and to conduct the trial of criminals in any sittings or term." At the opening of the term W., a barrister, produced a written authority under this section, general in its terms and not entitled to any particular case. In charging the grand jury in the case of the defendant Whiting the presiding Judge, of his own motion, directed them that it was their duty to find a bill against the defendant Townshend, whereupon W. preferred a bill upon which the defendant Townshend was tried and convicted. On a case reserved, which did not state that this was ordered by the court :—Held, that the conviction of the defendant Townshend must be quashed. The delegation by the Attorney-General of power to prefer an indictment must be special, and relate to a particular case. The conviction of the defendant Whiting to stand, he not having been prejudiced by being tried with defendant Townshend. REGINA v. TOWNSHEND & WHITING, 28 N. S. R. 468.

14. **Recognizance to Prosecute** — PREFERRING OF INDICTMENT — WHETHER CROWN PROSECUTOR CAN DO SO UNDER CODE SEC. 641.]—A party carried on to prosecute under section 641 of the Code is not necessarily required to attend or even to give evidence; nor is it necessary that the Attorney-General should attend or that he should give special directions to prefer the indictment, as it is competent for a Crown prosecutor appointed generally for any given county to carry on all prosecutions within the county, or if he neglects to do so, the presiding Judge may appoint a barrister for that purpose. In the absence of information the court will assume that the prosecution was carried on by a barrister duly appointed by the Attorney-General, or by the presiding Judge. There is no such thing as a private prosecution in offences against the public, and sec. 641 makes no difference in this regard. The party bound over may be the moving spirit in the prosecution, but unless required to give evidence his presence before the grand jury is immaterial. The Crown prosecutor sufficiently represents a prosecutor to validate any bill of indictment preferred by such officer. The time for taking such objection to the indictment under sec. 641 is before the prisoner is given in charge to the jury, and it is too late to move to quash afterwards. R. v. HAMILTON, 2 C. C. C. 179, 31 N. S. R. 322.

15. **Refusal of Magistrate to Bind Prosecutor to Prefer.**]—After a magistrate has summarily tried an accused for perjury by consent and acquitted the accused, the magistrate is right in refusing to bind the prosecutor over to prefer and prosecute an indictment for the same offence. REX v. BURNS, 4 C. C. C. 330, 1 O. L. R. 341.

VII. Separate Offences.

1. **Alternative Charges.**]—The fact that a person charged with an offence might, upon the facts, have been charged with a conspiracy with another, is no objection to the individual charge. Regina v. Clark, 2 B. C. R. 191.

2. **Count** — Separate Transaction — Evidence.]—The accused was convicted of the fraudulent concealment and removal of goods. One count of the indictment charged the removal to have been on or about the 11th day of September, but on the trial evidence was given as to the removal on the 13th of August. It was held that the expression 'on or about' the 11th of September would not apply to an act done at a time as long previous as 13th of August. The prisoner was placed at a disadvantage on the trial by this count, and conviction on this count was set aside. Rex v. Hurst, 5 C. C. C. 138, 13 Man. L. R. 584, 22 Occ. N. 68.

3. **Different Counts** — Separate Offence — Evidence.]—Where a prisoner was convicted on an indictment containing two counts, charging separate offences, and sentenced, and the evidence did not sustain the charge in one of the counts, but proved an offence of a different character, the judgment was arrested. Regina v. Hatheway, 6 All. N. B. R. 382.

4. **Each Count Must Contain Complete Allegation of Offence Charged in it.**]—Under the provisions of section 626 of the Criminal Code each count in an indictment may be treated as a separate indictment and the accused may be tried on any one or more of the same counts contained in an indictment separately, the consequence being that each count must contain a complete allegation of the offence which is charged in it against the accused. Regina v. Weir, 3 C. C. C. 499, Q. R. 9, Q. B. 253.

5. **Each Count Must Contain Essential Ingredients of Offence Charged.**]—Every count of an indictment must contain a statement of all the essential ingredients which together constitute the offence charged and any omission of any such essential ingredient renders an indictment or a count null and void. Regina v. Weir, 3 C. C. C. 503, Q. R. 9, Q. B. 253.

6. **Joinder of Counts and Defendants.**]—Where the 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. Regina v. Mason, 22 C. P. 246.

7. **Misjoinder of Counts** — Amending Reserved Case.]—An indictment contained two counts, one charging the prisoner with murdering M. on the 10th November, 1881; the other with manslaughter of the said M. 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, that the indictment was sufficient. The prisoner was convicted of manslaughter in killing his wife, who died on the 10th November, 1881. The immediate cause of her death was acute inflammation of the liver, which the medical testimony proved might be occasioned by a blow or a fall against a hard substance. About three weeks before her death the prisoner had knocked his wife down with a bottle. She fell against a door, and remained on the floor insensible some time. She was confined to her bed soon afterwards and never recovered. Evidence was given of frequent acts of violence committed by the prisoner upon his wife within a year of her death, by knocking her down and kicking her on her side :—Held, that there was evidence to leave to the jury that the disease which caused her death was produced by the injuries inflicted by the prisoner, and that the evidence of violence committed within a year of the death was properly received. Where it was objected at the trial that there was not evidence against the prisoner to leave to the jury, but the Judge was not asked to reserve the point, the case reserved was allowed to be amended at the argument in order to raise the point. Regina v Theal, 21 N. B. R. 449, 9 S. C. C. R. 397.

8. **Misjoinder of Counts** — Manslaughter — Evidence.]—An indictment contained two counts, one charging murder the other manslaughter of the same per-

son, on the same day. Upon "a true bill," found, a motion to quash the indictment for misjoinder was refused, the prosecutor electing to proceed on the first count only, and the prisoner was found guilty of manslaughter :—Held, affirming the Supreme Court of New Brunswick (5 P. & B. 449), that the indictment was good and that as the crime charged in the second count was involved in that charged by the first count the prisoner could not be prejudiced and the trial had been regular. The prisoner was convicted of manslaughter in killing his wife, who died 10th November, 1881. The immediate cause of death was acute inflammation of the liver, which might be occasioned by a blow or a fall against a hard substance. On 17th October preceding her death, 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 by the prisoner upon his wife within a year of her death, by knocking her down and kicking her in the side. The reserved questions were whether the evidence of assaults and violence prior to 10th November or 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 appealed from, 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. THE QUEEN, 7 S. C. R. 397.

9. **Power to Quash One Count Only — WHETHER NEW INDICTMENT CAN BE PREFERRED FOR SAME OFFENCE — TWO INDICTMENTS PENDING FOR SAME ASSAULT — ONE CHARGING A FELONIOUS ASSAULT WITH INTENT, ETC., THE OTHER FOR COMMON ASSAULT — ACQUITTAL ON INDICTMENT FOR MANSLAUGHTER — WHETHER PRISONER CAN BE CONVICTED FOR COMMON ASSAULT UNDER REV. STAT. C. 174, S. 191.]**—A Judge has power on application of the prosecution, to quash one of several counts in an indictment. Where one of two counts of an indictment for felonious assault has been quashed, a new indictment may be preferred for the offence. Two indictments—one for felonious assault with intent, etc., the other for common assault—in respect of the same transaction, may be preferred at the same time. On an indictment charging manslaughter by wounding, the prisoner if acquitted of the felony cannot be convicted of an assault under Rev. Stat. Can. c. 174, s. 191, REGINA V. SIROIS, 27 N. B. R. 610.

10. **Two Offences in One Count** — SPECIFIC OFFENCES.]—An indictment of theft under a power of attorney is not invalid on the ground of two offences being charged in one count, unless the same are set out as specific offences. The fraudulent sale, and fraudulent conversion of proceeds of sale, being alleged as means only by which the theft was consummated, cannot be said to be two offences. REGINA V. FULTON, 5 C. C. C. 36, Q. R. 10, Q. B. 1.

VIII. SUFFICIENCY OF.

1. **Aiding and Abetting.**]—The indictment charged one B. with obtaining by false pretences from one J. T., two horses with intent to defraud, and that the defendant was present aiding and abetting the said B. the misdemeanour aforesaid to commit :—Held, good, defendant being charged as a principal in the second degree :—Held, also, that the evidence, set out in the case, was not sufficient to sustain the charge. REGINA V. CONNOR, 14 C. P. 529.

2. **Allegation** — LIABILITY TO REPAIR.] —The corporation of St. John being bound by public law to repair the highways in the city, it is sufficient in an indictment for not repairing, to allege that the defendants, "ought of right" to repair, etc., without setting forth the particular ground of liability. REX V. MAYOR, ETC., OF ST. JOHN, Hil. T., 1828, N. B. R.

The corporation is not bound to widen a bridge. Ibid.

3. **Allegation** — LIABILITY TO REPAIR.] —In an indictment under 1 Rev. Stat. c. 147, for unlawfully and maliciously pulling down a building, it is not necessary to allege that it was done "riotously". REGINA V. ELSTON. 5 All. N. B. R. 2.

4. **Deposition, Preliminary Enquiry.**]—It is immaterial that a defendant is indicted upon facts and evidence disclosed on depositions at a preliminary enquiry, in which he was charged jointly with two others. THE QUEEN v. SKELTON, 4 C. C. C. 467, 18 C. L. T. 205.

5. **Bodily Harm** — DESIGN — SETTING OUT MEANS USED.]—By the Act 12 Vict. c. 29, " Whosoever shall maliciously by any means manifesting a design to cause grievous bodily harm, attempt to cause grievous bodily harm to any other person, whether any bodily harm be caused to such person or not, shall be guilty of felony" :—Held, that an indictment charging the prisoner with having maliciously assaulted J. M. and cut him with a knife, with intent to do him grievous bodily harm, concluding contra formam statuti, was bad; the means used to manifest the design to commit a felony not being set out with sufficient particularity. REGINA v. MAGEE, 2 All. N. B. R. 14.

Held, also, that the conviction could not stand for an assault as the Act (Art. 17) did not apply where the indictment was defective but where the evidence proved an assault under circumstances not amounting to a felony. If the indictment does not charge a felony including an assault, the prisoner cannot be convicted of an assault under Art. 17.

6. **Certainty.**]—The indictment charged that the defendant "did receive, conceal, or assist" one W., a deserter from the navy. Semble, not sufficiently certain and precise. REGINA v. PATTERSON, 27 U. C. R. 142.

7. **Court Wrongly Described.**]—On an indictment for not keeping a bridge in repair :—Held, no objection that the proceedings on the record were in the court of Queen's bench for the Province of Ontario, there being no such Province when they were had, for the mention of the Province was surplusage; nor that there were no second placita or continuances on the record, for, if necessary, an amendment would be allowed. REGINA v. DESJARDINS CANAL CO., 27 U. C. R. 374.

8. **Crim. Code Sec. 319 (c)** — "BY VIRTUE OF HIS EMPLOYMENT".]—An indictment under Crim. Code sec. 319 (c) would be demurrable if it did not allege that a clerk had received the property stolen "by virtue of his employment." REGINA v. TESSIER, 5 C. C. C. 73, 21 Occ. N. 48, Q. R. 10, Q. B. 45.

9. **Description of Offence in.**]—When a man is charged with an offence, the indictment should describe the offence charged with such particularity as would enable the accused to know exactly what he has to meet. REX v. BECKWITH, 7 C. C. C. 450.

10. **Effect of Verdict** — TECHNICAL OBJECTION.]—After verdict the court is bound to resort to any possible construction which would uphold against an indictment against a purely technical objection. REGINA v. MCINTOSH, 5 C. C. C. 254, 22 S. C. R. 180.

11. **Failure to Write Initials Opposite Names of Witnesses.**]—The provisions of the Code requiring the foreman to write his initials opposite the names of witnesses examined before the grand jury, is merely directory and failure to do so is no ground for quashing the indictment. REGINA v. BUCHANAN, 1 C. C. C. 442, 12 Man. L. R. 190.

12. **False Declaration** — INTENT TO MISLEAD.]—In a charge under sec. 147 of falsely making a statutory declaration, it is unnecessary to aver in the indictment that such declaration was made with the intent to mislead. THE QUEEN v. SKELTON, 4 C. C. C. 467, 18 C. L. T. 205.

13. **Foreign Indictment.**]—Held, that the evidence against the prisoner of having uttered a forged instrument not being otherwise sufficient, the court could not look at an indictment against him found by the grand jury of an American Criminal court. REGINA v. HOVEY, 8 P. R. 345.

14. **Indictment for Keeping Dynamite** — WHETHER CARELESSNESS NEED BE ALLEGED.] — 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, by reason whereof the subjects, &c., were in danger :—Held, good without alleging

carelessness or that the quantities deposited were so great that care would not produce safety. Weatherbe, J., dissenting. QUEEN v. HOLMES AND BRECKEN, 5 R. & G., N. S. R. 498.

15. **Ingredients of Offence.**]—Although every ingredient of an offence created by a statute must be set out in the indictment, it is not necessary to use its exact language. It is enough to charge in substance the offence created by the statute. REGINA v. WEIR, 3 C. C. C. 102. Q. R. 8, Q. B. 521.

16. **Insufficiency of Description of Persons Named in.**]—Under indictments for making notes in the names of other persons by procuration without authority (one of the indictments stating the note was made in the name of the "Estate F. H. Beaudry" and the other indictment stating the note was made in the name of the "Estate Louis Perrault,") it is essential under section 431 of the Code that the person whose name has been used should be stated in the indictment. Sec. 613 provides that an indictment shall not be insufficient if it does not name or describe any person with precision. Such a defect is merely a formal one, and can be cured by the Crown being ordered to furnish particulars further describing the person, and that the accused be arraigned only after their production. REGINA v. WEIR, 3 C. C. C. 155.

17. **Names of Deceased** — ALIAS DICTUS — 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., but there was no evidence that she ever went by the other name :—Held, affirming the court of Crown cases reserved (Quebec), that this variance between the indictment and the evidence did not invalidate the conviction for manslaughter. JACOBS v. THE QUEEN, 16. S. C. R. 433.

18. **Need Not be Founded on Depositions in Certain Cases.**]—An indictment is not required to be founded on evidence contained in depositions taken before a justice of the peace at a preliminary inquiry, when a bill is preferred by the Attorney-General, or by his direction, or on the consent of a Judge, or by the order of the court. REGINA v. WEIR, 3 C. C. C. 155.

19. **Omission in Count not a Material Defect.**]—Where a count charged perjury before a coroner, when the perjury had been committed before a coroner and jury, it was held that the words of the indictment were sufficient to give accused notice of the offence with which he was charged, and there was therefore no reason for withdrawing the count from the jury, or instructing the jury to acquit the prisoner on that count. REGINA v. THOMPSON, 4 C. C. C. 265, 2 Terr. L. R. 383.

20. **Omission of Word "Feloniously"** — EFFECT OF — RESERVING QUESTION FOR CONSIDERATION OF COURT — WORDS "DURING TRIAL" IN REV. STAT. c. 129, s. 22.]—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 & 33 Vict. c. 29, s. 32, by adding the words "feloniously". The prisoner was found guilty upon the amended indictment :—Held, on a case reserved, that the indictment without the "feloniously" was bad :—Held, also, 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. c. 159, s. 22, Consol. 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. REGINA v. MORRISON, 18 N. B. R. 682.

21. **Perjury.**] — In an indictment for perjury, which charged the defendant with having sworn falsely on certain proceedings before justices, wherein he was examined as a witness, the allegation of materiality averred that "the said D. R. (the defendant) being so sworn as aforesaid, it then and there became material to inquire and ascertain," &c. :—Held, bad, as not sufficiently showing that the alleged perjury was committed at the said proceedings. QUEEN v. ROSS, 1 Old. N. S. R. 683.

22. **Pleading** — Omission of "Feloniously".]—In an indictment purporting to be under 32 & 33 Vic., ch. 22, sec. 54, D., for malicious injury to property, the word "feloniously" was omitted :—Held, bad, and order to be quashed. Regina v. Gough, 3 O. R. 402.

23. **Vagueness** — Attempt to Steal — Name of Person Attempted to be Stolen From Unknown — No Description of Goods.]—An indictment for an attempt to steal is sufficient, though the name of the person stolen from is unknown to the grand jury, and in such cases it is sufficient if it has been committed against a person unknown to the jurors; nor on such an indictment is it necessary to specify any particular goods. Regina v. Taylor, 5 C. C. C. 89.

24. **Words "Against the Form, etc.," Omitted.**]—An indictment charging the crime of breaking and stealing, in due form but not concluding 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" is sufficient. Regina v. Doyle 27 N. S. R. 294.

IX. Variance.

1. **Count** — Separate Transaction — Evidence.]—One count of an indictment having charged the fraudulent removal of goods on or about the 11th day of September, but the evidence establishing the time of removal at the 13th day of August, it was held that the count could not apply to this, and the prisoners had been placed at a disadvantage, and conviction on this count was set aisde. Rex v. Hurst, 5 C. C. C. 338, 13 Man. L. R. 584, 22 Occ. N. 68.

2. **Variance.** —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 otbained certain cheques on the false pretence that "there were 2,680 bushels of beans" in his warehouse. At the assizes he was indicted for obtaining the cheques on the false pretence "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 s. 641 of the Criminal Code, 1892 :—Held, also, that the prisoner not having been mislead or prejudiced by the amendment, it was properly made. Regina v. Patterson, 26 O. R. 656.

3. **Variance.**]—Where an indictment charged defendant with procuring certain persons to cut trees, the property of A., B. and C., growing on certain lands belonging to them, and the evidence shewed that the land belonged to them and to another as tenants in common :—Held, that a conviction could not be supported. Regina v. Quinn, 29 U. C. R. 158.

4. **Variance.**]—Variance between indictment and proof, in description of land. Regina v. Baby, 12 U. C. R. 346.

5. **Variance.**]—An indictment alleged a nuisance to be near lot 16, and the evidence shewed it to be on it :—Held, a fatal variance. Regina v. Meyers, 3 C. P. 305.

X. Miscellaneous.

1. **Code Sec. 609.**]—Indictment includes any record. Smitheman v. The King, 9 C. C. C. 19, 35 C. S. C. R. 189.

2. **Contra Formam.**]—As to the averment, "contra formam statuti," see Regina v. Deane, 10 U. C. R. 464; Regina v. Walker, 10 U. C. R. 465; Regina v. Cummings, 16 U. C. R. 15; Regina v. Carson, 14 C. P. 309.

3. **Copy.**]—A copy of an indictment for high treason may be had by the consent of the attorney-general. Rex v. McDonel, Tay O. R. 299.

4. **Copy of Indictment.**]—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 re-

viewed 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 by certiorari, the court had jurisdiction. REGINA v. IVY, 24 C. P. 78.

5. **Defects in**—WAIVER BY PLEADING. — The defendant was convicted on an indictment charging him with feloniously receiving, in the months of May and April, 1878, one pair of boots, the goods of W. H., three fishing rods, &c., the goods of A. F. C., and a quantity of silverware, &c., the goods of J. R. J., then lately before stolen and carried away by a certain evil disposed person, he, the said T. H. Quinn then well knowing the said goods and chattels to have been feloniously stolen :—Held, that the defendant having pleaded to the indictment, could not, in arrest of judgment, take the objection that the indictment was bad in law as charging him with having received certain goods which were not alleged to have been feloniously stolen, as the defect was aided by the verdict, under chapter 29 of the Acts of 1869, section 32; and further, that the fact of three different offences being charged in the indictment, if objectionable at all, could not be taken advantage of after verdict. The prisoner was tried by a jury called from an extra panel the order for which, made under 4th R. S. c. 92, s. 37, was signed by only three of the Judges :—Held, that the order was valid although not signed by a majority of the Judges. QUEEN v. QUINN, 1 R. & G., 139.

6. **Demurrer to Indictment.**]—An indictment having been held bad upon demurrer, the judgment was that the indictment be quashed, so that another indictment might be qreferred, not that defendants be discharged. REGINA v. TIERNEY, 29 U. C. R. 181.

7. **Duplicity.**]—Duplicity in an indictment on a summary trial before the county Judge, under 32 & 33 Vict. c. 35, is not a ground of error. CORNWALL v. REGINA, 33 U. C. R. 106.

8. **Furnishing Copies of Indictment After Acquittal.**]—After an acquittal no copy of an indictment should be furnished without the order of the Judge or the fiat of the Attorney-General. HEANAY v. LYNN, Ber. N. B. R. (55) 27.

9. **Indictment of Corporation** — PUNISHMENT — CRIMINAL CODE, ss. 191, 192, 213, 252, 639 AND 713.]—The defendants, a corporation, were indicted for that they unlawfully neglected, without lawful excuse, to take reasonable precautions and to use reasonable care in maintaining a bridge forming part of their railway which was used for hauling coal and carrying passengers, and that on the 17th of August, 1898, a locomotive engine and several cars, then being run along said railway and across said bridge, owing to the rotten state of the timbers of the bridge, were precipitated into the valley underneath, thereby causing the death of certain persons. The defendants were found guilty and a fine of $5,000 was inflicted by Walkem, J., at the trial :—Held, per McColl, C. J., and Martin, J., on appeal affirming the conviction, that such an indictment will lie against a corporation under s. 252 of the Code. Per Drake and Irving, JJ. : Such an indictment will not lie against a corporation. Sections 191, 192, 213, 252, 639 and 713 of the Code considered. A corporation cannot be indicted for manslaughter. Per McColl, C. J.: The words "grievous bodily harm," in s. 252, have no technical meaning, and in their natural sense include injuries resulting in death. Per Drake, J.: The indictment charges the company with the death of certain persons owing to the company's neglect of duty, and is a charge of manslaughter, the punishment of which is a term of imprisonment for life, and because a corporation cannot suffer imprisonment therefor, the punishment laid down in the Code is not applicable to such a body. When death ensues the offence is no longer "grievous bodily injury," but culpable homicide. REGINA v. UNION COLLIERY COMPANY, 7 B. C. R. 247.

10. **Indictment of Street Railway Company** — NUISANCE — ENDANGERING LIVES OF PUBLIC — REMOVAL FROM SESSIONS INTO HIGH COURT — DIFFICULT QUESTIONS OF LAW. REX v. TORONTO R. W. Co., 4 O. W. R. 277, 5 O. W. R. 621.

11. **Interference with Electric Wires.**]—Quære, as to whether one company using electric wires is liable to indictment for interfering with the wires of another company. See BELL TELEPHONE Co. v. BELLEVILLE ELECTRIC LIGHT Co., 12 O. R. 571.

12. **Jury Competent to Bring for Lesser Offence upon Evidence Showing Greater Offence.**]—Upon an indictment charging an abortion and an attempt to commit an abortion, the jury brought in a verdict of guilty of the attempt, and upon an appeal against the verdict, it was held that the jury might convict of the lesser offence, where there was evidence, which if credited, would warrant a conviction for the abortion. THE QUEEN v. HAMILTON, 4 C. C. C. 251.

13. **Proof of Indictment.**]—The production of the original indictment is insufficient to prove an indictment for felony; but a record must be made up, with a proper caption. HENRY v. LITTLE, 11 U. C. R. 296.

14. **Stealing from a Church.**]—An indictment for breaking into a church and stealing vestments, &c., there, describing the goods stolen as the property of "the parishioners of the said church" :—Held, bad. REGINA v. O'BRIEN, 13 U. C. R. 436.

They must be averred to belong to some person or persons individually. Such a defect is not within 18 Vict. c. 92, ss. 25, 26. IB.

See also ASSAULT — CONSPIRACY — MURDER — RAPE.

INFANTS.

1. **Habeas Corpus, Detention Under Father's Order in Reformatory**]—Detention of a child in an institution for the purpose of discipline where the detention is by order of the father, exercising a legal right even though unwisely, were not to be interfered with by the courts. Where the petitioner for a writ of habeas corpus is an infant the writ is not invalid for that reason, as the age of the petitioner is immaterial, since it issues in the King's name. RE A. B. 9 C. C. C. 390.

2. **Neglected Child** — WARRANT COMMITTING TO ORPHANAGE — CONVICTION OF PARENT — R. S. NOVA SCOTIA, c. 116.] —On an application by way of habeas corpus for an order declaring a child in an orphan's home to be illegally detained under a commitment following a conviction of the mother for permitting her children to grow up without salutary control :—Held, that the commitment was valid and was not bad for being indefinite in that it specified merely that the child was to be kept until he is sixteen years of age. That the conviction against the mother standing was a sufficient condition precedent to the jurisdiction of the magistrate to deal with the child, and the conviction on this proceeding would not be trusted as a nullity even though it might be open to objection of duplicity. EX PARTE YATES, 9 C. C. C. 359.

INFORMATION.

1. **Against Judge.**] — Application for leave to file an information against a Judge for a recorder's court, upon the grounds that he had falsified the records of the court and maliciously condemned the applicant as guilty of a felony upon the verdict of his peers, when, as alleged, no verdict whatever was found by the jury. The facts were that the jury came into court and the foreman pronounced a verdict of guilty. The counsel of the accused then questioned (not through the court) some of the jury as to the grounds of their verdict, when one stated that he did not concur in it. The attention of the court was not drawn to this dissent, nor did it appear 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 the information. REGINA EX REL. STARK v. FORD, 3 C. P. 209.

2. **Against Judge.**]—On application for leave to file a criminal information against a division court Judge, for his conduct in imposing a fine for contempt upon a barrister employed to conduct a case before him :—Held, that such leave should never be granted unless the court see plainly that dishonest, oppressive, vindictive, or corrupt motives influenced the mind, and prompted the act complained of, which in this case was clearly not shewn. IN RE RECORDER AND JUDGE OF DIVISION COURT OF TORONTO, 23 U. C. R. 376.

Quære, whether such information is proper in the case of a Judge of an inferior court of civil jurisdiction, in relation to a matter over which he has exclusive jurisdiction.

3. **Against Justice.**]—To support a motion for leave to file a criminal information against a justice of the peace, the affidavits should not be intituled as in a suit pending. Bustard v. Schofield, 4 O.S. 11.

Notice must be given of complainant's intention to apply. Ib.

The motion should be made without unnecessary delay, and sufficiently early in term to admit of notice of it being given. Ib.

4. **Amendment of** — Absence of Accused — Crim. Code Sec. 853.]—The magistrate on an information for selling liquor in violation of the Canada Temperance Act has no power at the trial to amend the information by substituting the offence of an illegal keeping for sale, in the absence of the accused, and conviction quashed. Ex Parte Doherty, 1 C. C. C. 84.

5. **Amendment of** — Not Re-Sworn — Failure to Object.]—A magistrate in the presence of the defendant and prosecutor amended an information which was laid under the Master and Servant Act, Ont., 1901, but the information was not re-sworn. The information as amended was then read over to defendant, and he was informed that he would be tried on the amended charge. He made no application for adjournment or raised any protest to the trial proceeding and himself gave evidence :—Held, that under the circumstances the magistrate having the defendant before him, even though brought there improperly, may proceed to try him on the amended information though not re-sworn, even though the Act under which he is tried requires an information under oath, provided the defendant does not protest. Rex v. Lewis, 6 C. C. C. 499.

6. **Amendment** — Waiver of Objection.]—Where an information bad on its face was amended without being re-sworn, the defendant did not waive an objection made and noted by going to trial. Regina v. McNutt, 3 C. C. C. 184, 28 N. S. R. 377.

7. **Certiorari** — Mistake in Return to Writ.]—Where a wrong information is returned with the writ of certiorari through inadvertence, and an affidavit explaining the circumstances is made by the magistrate, the conviction will not be quashed for that alone where the explanation is satisfactory :—Held, also, that a purely clerical error in the date of the offence charged in the information is not a ground for setting aside a conviction, otherwise regular. Ex Parte Kavanagh, 2 C. C. C. 267.

8. **Deputy Returning Officer** — Locus Standi.]—Where an information was laid before a deputy returning officer against a prosecutor in connection with the referendum vote taken on the Ontario Liquor Act, 1902, and when the defendant came up before the police magistrate for trial, the deputy returning officer laid an information charging the defendant with attempting to personate, the magistrate has only summary jurisdiction under clauses 4, 5 and 6 of R. S. O. 1897, ch. 10 to try the offender under the first information, and the deputy returning officer has no locus standi on an application for a mandamus to compel the magistrate to impose the full statutory penalty. Rex v. Case, 7 C. C. C. 212, 6 O. L. R. 104, 23 Occ. N. 279.

9. **Harboring Deserting Seamen** — Presumption.]—Where an information set up in general terms that the defendant had harbored and secreted deserting seamen without alleging that the ship from which the desertion took place was a duly registered British ship, the necessary intendment is that the prosecution was brought under the Seamen's Act of Canada. Regina v. O'Dea, 3 C. C. C. 402, 9 Q. Q. B. 158.

10. **Information Need Not be Sworn.**]—An information on which a summons issues for an offence triable summarily (e. g., under the Canada Temperance Act), need not be under oath. Not unless a warrant afterwards issues for the arrest of the defendant. Regina v. Wm. McDonald, 29 N. S. R. 35.

11. **Insufficient by Reason of Uncertainty.**]—An information charging an alleged offence of "illegal fishing" under the R. S. C. 1886, ch. 95, (Fisheries Act) is too uncertain to sustain a conviction thereon even where the evidence on such information was substantially the same as in two other informations made by the same complainant in which convictions were upheld for "fishing for salmon by means of a spear." Ex Parte Dixon, 7 C. C. C 336, 36 N. B. R. 109.

12. **Limitation of Time to Lay** — FRAUDULENT REMOVAL OF GOODS TO PREVENT DISTRESS.]—On a charge of fraudulently removing goods to evade distress for rent, justices have no power to receive an information or grant a summons when the information was laid more than six months after the matter of complaint or information arose contrary to section 841 of the Criminal Code. REX v. DAVITT, 7 C. C. C. 514.

13. **Not Sworn by Informant.**]—An information signed and sworn to by the person other than the one mentioned as the informant is defective. REGINA v. McNUTT, 3 C. C. C. 184, 28 N. S. R. 377.

14. **Re-Swearing Informant after Amendment.**]—An information bad on its face when signed and sworn to by another person than the one mentioned as the informant, is not cured by an amendment altering the name of the informant to that of the person who swore to the information in the presence of, and with the consent of the latter without being re-sworn. REGINA v. McNUTT, 3 C. C. C. 184, 28 N. S. R., 377.

15. **Signature.**]—A criminal information must be signed by the master of the Crown office. REGINA v. CROOKS, 5 O. S. 733.

16. **Wounding Public Officer**—AMENDING SENTENCE.]—An information charging accused with wounding a public officer without averring that the public officer was engaged in the execution of his duty, will not support a sentence of more than three years imprisonment, and the Court of Appeal upon the hearing of an appeal under a reserved case has the power to pass such a sentence as ought to have been passed. REGINA v. DUPONT, 4 C.C.C. 566.

See also CERTIORARI—CONVICTION — INTOXICATING LIQUORS—HABEAS CORPUS.

INN KEEPER.

1. **Goods under Seizure**—INNKEEPER'S LIEN—ABANDONMENT— TENDER — EVIDENCE.]—An hotelkeeper who locks up the room of a guest containing the latter's luggage 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 luggage, etc., under "lawful seizure and detention," in respect of the landlord's common law lien; and the taking away of such luggage by the guest without the landlord's authority is "theft" under s. 306 of the Crim. Code. (But see now 63 V. c. 46, s. 3, sch.) 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 luggage, as to which the permission does not extend, is guilty of "stealing" the same under s. 306 of the Criminal Code. 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. Circumstantial evidence of theft. REGINA v. HOLLINGWORTH, 4 TERR. L.R. 168. 2 C. C. C. 293.

INSANITY.

1. **Insanity.**]—As a defence in certain cases, discussed. REGINA v. RIEL, 2 MAN. L. R. 321.

2. **Care of.**]—It is the duty of the Executive Government of the Province to assume the custody and care of persons acquitted of criminal charges upon the ground of insanity, which duty, by the common law of England, is vested in the Crown. QUEEN v. MARTIN, JAMES N. S. R. 322.

INSOLVENCY.

1. **Insolvency Act of 1869** — OFFENCE UNDER — SPECIAL OR COMMON JURY.]—Defendant was tried in August, 1876, for certain offences against the provisions of the Insolvent Act of 1869, committed while that Act was in force. There was no evidence as to whether or not the proceedings were commenced before the Insolvent Act of 1875 came into operation. Section 148 of the Act of 1689 required that all offences under the Act should be tried by a special jury, but the 141st section of the Act of 875, providing for the trial of

offences under the Act, omits the clause requiring a special jury.—Held, on a case reserved by Allen, C.J., etc., that the summoning of the jury, being a matter of procedure, the provisions of the Act of 1869 were superseded by those of the Act of 1875. REGINA v. McLEAN, I. P. & B., N. B.R. 377.

INSURANCE.

1. **Fire** — POWER OF DOMINION LEGISLATION AFFECTING.]—It is intra vires of the Dominion Parliament to prohibit a fire insurance company incorporated in one province from carrying on business in another province without first obtaining a license from the Dominion. REGINA v. HOLLAND, 4 C. C. C. 72.

INLAND REVENUE.

1. **Brewer's License** — NECESSITY FOR PROVINCIAL LICENSE.]—The Provincial Legislature has power to require a brewer duly licensed as such by the Dominion Government, to take out a provincial license to sell intoxicating liquor manufactured by such brewer. R. v. NEIDERSTADT, 10 C. C. C. 292.

2. **Information to Recover Penalties**—BREACH OF REVENUE ACT—DUTIABLE ARTICLES.]—By Act of Parliament, 8 & 9 Vict. c. 93, gunpowder is prohibited from being imported into the British possessions in America, except from the United Kingdom or some British possession.—Held, 1st, That gunpowder coming from a foreign country could not be proceeded against as a non-enumerated dutiable article, under the Provincial Act, II. Vict. c. 1, for being imported into the Province at a place not a port of entry, contrary to the Act II. Vict. c. 2, s. 21. But 2nd,—That it was liable to seizure and forfeiture, under the 17th section of the Act, for being landed without entry at the Treasury.

THE ATTORNEY-GENERAL v. FOUR HUNDRED KEGS OF GUNPOWDER, 2 ALL. N.B.R. 493.

The Provincial Legislature has power to impose additional grounds of forfeiture for breach of the Revenue laws, on goods subject to forfeiture under an Act of Parliament. Ib.

3. **Possession of Still without License.**]—SEC. 159.]—Held, that the gist of the offence of having possession of a still without a license under sec. 159 of the Inland Revenue Act, was the having possession of it anywhere, or at all. It applied as well to carriers as to other persons. R. v. BRENNAN, 6 C.C.C. 37.

INTOXICATING LIQUORS

I. CANADA TEMPERANCE ACT.
II. ONTARIO LICENSE ACT.
III. TERRITORIAL ORDINANCE.
IV. MISCELLANEOUS.

I. CANADA TEMPERANCE ACT.

1. **Amendment of Information in Absence of Accused**—SEC. 116.]—On an information for selling liquor in violation of the Canada Temperance Act the magistrate has no power to amend the information by substituting the offence, illegal keeping for sale, in the absence of the accused, and conviction quashed. EX PARTE DOHERTY, 1 C.C.C. 84, 33 N.B.R. 15.

2. **Canada Temperance Act, Sec. 115 (a)**—PREVIOUS CONVICTIONS—SOLICITOR'S AUTHORITY.]—A solicitor has authority to represent two clients on the hearing of a charge unde the Canada Temperance Act in order to answer the magistrate's enquiry as to previous convictions, though the accused himself be not present. REX v. O'HEARN, 5 C.C.C. 187.

3. **Certiorari**—SUMMARY CONVICTION—WRONG INFORMATION RETURNED WITH WRIT.]—The defendant was convicted for keeping intoxicating liquor for sale, contrary to provisions of the Canada Temperance Act, and also for selling liquor in contravention of the statute. An order was made for the destruction of the liquor seized under a search warrant. On the return to the writ of certiorari, the wrong information by inadvertence was attached, being for keeping for sale, instead of unlawfully selling. An affidavit by the magistrate was read explaining that the papers in the two matters had become transposed.—Held, that the apparent variation between the information, sum-

mons, and adjudication being satisfactorily explained the conviction must stand.—Held, also, that an error in the date of the offence as set out in the information returned with the writ, where clearly a clerical error is not a ground for quashing the conviction.—Held, also, that an order for the forfeiture of liquor seized under a search warrant is bad, unless the warrant was based on an information duly laid according to provisions of 51 Vict. c. 34, s. 108. Ex parte Cavanagh, 2 C.C.C. 267, 34 N.B.R. 1.

4. **Cities and Counties**—Operation of Act in.]—1. When, after the second or prohibitive part of the Canada Temperance Act has been brought into force in a given county, a part of that county is afterwards created by the Provincial Legislature into a city, the second part of the Act still remains in force in the territory created into a city. R. v. McMullen, 9 C.C.C. 531.

5. **Constitutional Law** — Temperance Act, 1864—Conflict with Provincial Statutes.]—The Temperance Act, 1864, or the "Dunkin Act," was applicable equally to Upper and Lower Canada and under it municipalities were given the power to pass by-laws prohibiting the granting of licenses. By sec. 129 of the B.N.A. Act, the Temperance Act was left in force until repealed by the legislature vested with power to do so. The Quebec Act of 1870 abrogated all of the Dunkin Act except the first ten clauses, which give to municipalities the power to deal with prohibition of licenses.—Held, on an application for habeas corpus, that inasmuch as the Temperance Act 1864 was passed by the legislature representing both Upper and Lower Canada, it was ultra vires of the Quebec Legislature alone to repeal it or any part of it. 2. The fact of such act having remained in force, however, in the Province of Quebec, did not debar the local legislature from enacting a law having for its object the regulating of the liquor traffic within the limits of its territory. 3. That the Federal Act of 1878 (Scott Act) did not affect the province of Quebec in relation to the first ten clauses of the Act of 1864, since the said clauses had long prior been introduced into the body of Quebec laws by local legislation. Ex parte O'Neill 9 C.C.C. 141.

6. **Distress**—Levy on Cask of Whisky —Where Act in Force.]—The Canada Temperance Act being in force in the county of Northumberland, N.B., and the bailiff refusing to levy on a cask of whisky therein, it was held on habeas corpus proceedings that the bailiff should have levied thereon, and that there was nothing in the Act to prevent a judicial sale of intoxicating liquors. Ex parte Fitzpatrick, 5 C.C.C. 191. 32 N.B.R. 184.

7. **Execution of Process of Court**—Interest of Officer Disqualification.] —The informant had laid a complaint under the Canada Temperance Act, and seized certain liquor, delivered it to a justice, made a complaint for its destruction, got an order himself to destroy it, which he did.—It was held, that as he was the informer and liable for costs, and at the risk of damages, he was an improper person to execute the order made. An officer clothed with such duties should be free from interest, bias for prejudice. Ex parte McCleare, 5 C.C.C. 45.

8. **Forfeiture by Order of Magistrate.**]—An order for the forfeiture of liquor seized under a search warrant is bad, unless the warrant was based on an information duly laid according to the provisions of 51 Vict. c. 34, s. 108. Ex parte Kavanagh, 2 C.C.C. 267, 34 N.B.R. 1.

9. **Hard Labor imposed for Collecting Pecuniary Penalty.**]—A warrant of commitment following a summary conviction for a first offence against the provisions of the second part of the Canada Temperance Act, imposed imprisonment with hard labor as a means of collecting a penalty, is bad, and is not susceptible to amendment on habeas corpus proceedings. Rex v. McIver, 7 C.C.C. 183.

10. **Laying of Information Under, before Two Judges.**]—Sec. 105 of the Canada Temperance Act requires an information under it to be laid before two justices, who must grant the summons, both being present, but it is not necessary that the information or summons should be signed by more than one. Regina v. Ettinger, 3 C.C.C., 387. 32 N.S.R. 176.

11. **Liability of Express Agent.**]—An express agent at Port Elgin received in the ordinary course of business a package

of whisky, which a resident had purchased from a liquor dealer in Amherst (a place where the Canada Temperance Act was in force) with directions to have it forwarded by express C. O. D. On receipt of the package the Port Elgin agent delivered it, collected the money and remitted in due course :—Held, that the agent was guilty of selling contrary to the statute. R. v. CAHILL, 6 C. C. C. 204, 35 N. B. R. 240, 21 Occ. N. 55.

12. **Saloons** — SUNDAY OBSERVANCES BY-LAW — VALIDITY.]—There is no power in a municipality to pass a by-law closing any kind of licensed premises, except saloons under sec. 50 of the Municipal clauses Act R. S. British Columbia, 1897, c. 144. By sec. 7 of c. 124 R. S. B. C. 1897 the sale of liquors is prohibited between certain hours named, as also during other days or hours that such places are kept closed by order of any municipal by-law, which means by a by-law which any municipality may competently enact by virtue of some statute general or special, and not by virtue of this section itself. Where a statute provides penalties for offences against it and the necessary machinery to enforce them, a by-law to enforce the penalties is not necessary, and it would be incompetent for a municipality to pass such. HAYES V. THOMPSON, 6 C. C. C. 227, 9 B. C. R. 249.

13. **Second Offence** — PROOF OF OPINIONS — CONVICTION.]—As proof of a previous conviction a certificate of the commissioner was put in evidence certifying that defendant had been convicted for keeping for sale intoxicating liquors contrary to the second part of the Canada Temperance Act :—Held, that the certificate was sufficient proof of a previous offence notwithstanding that it did not disclose that such was the first offence. EX PARTE BASTON, 10 C. C. C. 240.

14. **Separate Complaints for a Series of Similar Offences** — TEMPERANCE ACT — CONSTRUCTION OF.]—Where under 27 and 28 Vict. c. 18, (Can.) commonly called the "Temperance Act of 1864," a number of convictions were secured against an accused for selling intoxicating liquors contrary to the Act upon separate complaints, it was held upon appeal to the Judicial Committee of the Imperial Privy Council that section 17 of the Act providing that "two or more offences by the same party may be included in one complaint" could not be construed to mean that a complaint made at a particular date for a single offence included all offences of the same nature previous to that date. WENTWORTH V. MATHIEU, 3 C. C. C. 429 (Imp.), A. C. 212 (1900).

15. **Summary Conviction** — SUBSTITUTIONAL SERVICE — AMENDMENT OF INFORMATION.]—Where defendant was convicted of keeping liquor for sale in violation of the Canada Temperance Act, having been served with a summons by substitutional service, which summons was issued on an information charging the offence of illegally selling :—Held, on motion for habeas corpus that the conviction was bad and prisoner should be discharged. R. v. LYONS, 10 C. C. C. 130.

16. **Summary Conviction** — SUBSTITUTIONAL SERVICE — CONVICTION IN ABSENCE OF DEFENDANT — PROOF OF SERVICE.]—Defendant was convicted not having appeared, of a third infraction of the Canada Temperance Act. It was proved that the constable had served defendant's wife the day before at his residence :—Held, that there was not sufficient evidence of service to entitle court to proceed in absence of defendant; the hour of service and the distance from the place of sitting of the court were material elements, to enable magistrate to decide whether reasonable notice had been given. RE O'BRIEN, 10 C. C. C. 142.

17. **Third Offence** — INFORMATION — CONVICTION.]—A conviction for a third offence under the Canada Temperance Act, where the alleged third offence had been committed previous to the day of the laying of the information for the second offence, was held to be invalid. EX PARTE MCCOY, 7 C. C. C. 485, 36 N. B. R. 186.

18. **Two Offences** — CONVICTIONS NOT CONCURRENT UNLESS SO STATED.]—Where a prisoner was convicted for two offences against the Canada Temperance Act, it was held that the sentences did not run concurrently in the absence of statement by the justices as to when they should run. EX PARTE BISHOP, 1 C. C. C. 118.

II. Ontario License Act.

1. **Appeal from Justice's Order** — Consent of Attorney-General.]—Sec. 118 of R. S. O. 1897, chap. 245, does not give a right of appeal to an inspector from the order of a police magistrate; the term justice does not include a police magistrate. R. v. Smith, 10 C. C. C. 362.

2. **Liquor License Act.**]—An objection that it did not appear that the evidence had been read over to the witnesses was overruled, following Regina v. Excell, 20 O. R. 633. The direction in s.-s. 2 of s. 96, as to the witnesses signing their evidence, is not imperative but directory merely. Regina v. Scott, 20 O. R. 646.

3. **Liquor License Act.**]—For an offence under "The Liquor License Act," R. S. O. 1887, c. 194, the license inspector who lays the information is a competent witness. Regina v. Fearman, 22 O. R. 456.

4. **Percentage of Alcohol Constituting.**]—Diluted lager beer yielding an average strength of 2.05 per cent. of absolute alcohol is an intoxicating liquor under the Ontario Liquor License Act. Regina v. McLean, 3 C. C. C. 323.

5. **Retail License** — Selling Liquor Elsewhere than on Premises.]—Defendant was holder of a shop license to sell liquor in the city of Hamilton authorizing him to sell in his shop, in quantities not less than three pints. Defendant sold and delivered in proper quantities to parties residing outside of Hamilton :—Held, that the sales having been put up at the store, and duly appropriated to the purchaser, it was immaterial when they were delivered, or whether defendant made delivery in his own wagon or by the express company. R. v. Hazell, 2 C. C. C. 516.

6. **R. S. O. 1897, Cap. 245** — Temporary Bar — Resolution of Commissioners — Ultra Vires.]—1. Where the license commissioners by resolution had provided a fine for keeping two bars open in the same premises, larger than the statute allowed, the resolution was held to be ultra vires, and a conviction entered under it, bad, even though the fine imposed was less than what might have been authorized by a valid resolution. R. v. Lewis, 10 C. C. C. 184.

7. **Sale by Licensee in Prohibited Hours** — Calling Defendant as Witness for Prosecution.]—A defendant in a prosecution for illegal selling of liquor, under the Liquor License Act of Ontario, is a compellable witness on behalf of the prosecution, even though evidence has been adduced tending to show the illegal acts and has failed. R. v. Nurse, 2 C. C. C. 57, 35 C. L. J. 35.

8. **Sale of Liquors in a Club** — Ontario License Act — Certiorari.]—The sale of liquors without a license by the steward of an incorporated club, out of the stock purchased by the club for the use of its members only, at a price fixed by the directors, is an infraction of the Ontario Liquor License Act. Query—Where the right of appeal to the general sessions from a conviction has been taken away by statute, whether the court will go into the facts on certionari even where conviction is good on its face. R. v. Hughes, 2 C. C. C. 5, 29 O. R. 179.

9. **Summary Conviction** — Amendment — Jurisdiction — Locality of Offence — Code Sec. 889.]—1. The provisions of the Ontario Liquor License Act are applicable to a boat travelling on Lake Huron from an Ontario port, and the jurisdiction of the Province extends to the International Boundary. 2. A conviction is not bad because the particular place at which the offence is alleged to have been committed is not set forth, where it is stated to have been committed within the county, in which the magistrate had jurisdiction. 3. Where the conviction was for unlawfully allowing liquor to be sold, whereas the offence under the statute was selling without the license required by law, it was held to be capable of amendment by applying the remedial provisions of Code sec. 889. R. v. Meikleham, 10 C. C. C. 382.

III. Territorial Ordinance.

1. **Cancellation of License for Second Offence** — Liberty of the Subject — Imprisonment of Licensee for Act of Servant — Expediting Hearing.]—The defendant had been previously convicted of offences against the Liquor License Ordinance (N. W. T.) on the 14th Oct., 1900, and 25th April, 1901, and the

justice in proof thereof, declared his license absolutely forfeited :—Held, on appeal that the previous offences did not necessarily need to have occurred during the currency of the existing license; having regard to the proper construction of sec. 82 of the Act, which enacts for the second or any subsequent offence to a penalty of "from $100 to $200 with absolute forfeiture of the license" :—Held, also, that the conviction was not bad for imposing a fine and in default imprisonment, the defendant not having himself personally violated the law; since sec. 64 enacts that the offence of a servant or agent shall be presumed to be the act of the licensee, and the presumption was not rebutted by any proof. Under sec. 21 of the Ordinance the presiding Judge appointed to sit in the sittings for which notice of appeal has been given may on application of the Attorney-General expedite the hearing of the appeal before the first day of the sittings. R. v. McLeod, 6 C. C. C. 94, 5 Ter. L. R. 245.

2. **Certiorari**—Defendant not Proved or Alleged to be a Licensee — Liquor License Ordinance N. W. T.]—Where the information laid under the Liquor License Ordinance (N. W. T.) failed to allege that defendant was a licensee, nor was it proved in evidence that the premises in question were licensed premises, the conviction was held bad. R. v. Davidson, 6 C. C. C. 120, 4 Terr. L. R. 425.

3. **Keeping for Sale** — Statutory Presumption — Onus of Proof — Territorial Ordinance — Stated Case.]—Liquor License Ordinance (N. W. T.) for unlawfully keeping liquor for sale, without a license. A stated case under sec. 900 of the Code was made :—Held, that 1. The discovery on the premises of glasses, corkscrews, glasses with beer in them, and other bottles, casts the onus of proof upon the defendant under the provisions of sec. 114 of the Liquor License Ordinance, and where such devices or appliances are discovered on the premises, the presumption is that they "exist" within the meaning of the section. The word "exist" being construed "to be". 2. The mere fact of inadmissible evidence having been improperly received will not vitiate a conviction if there was ample evidence outside of such to warrant the conviction. 3. A justice is not compelled to commit to the nearest gaol, but a committal to any goal within the territories is valid. 4. On the stated case argument must be limited to the questions of law arising, formally set out in the case stated and which have been taken before the magistrate. R. v. Nugent, 9 C. C. C. 1.

4. **Liquor License Ordinance N. W. T. 1892.**]—A conviction under the Liquor License Ordinance of the North-West Territories 1891-2, for selling during prohibited hours is bad, where it is not alleged nor proven by the prosecution that the defendant held a license for the premises where the bar was kept open. R. v. Henderson, 2 C. C. C. 364, 4 Terr. L. R. 146.

5. **Intra Vires** — Code Sec. 880.]—Sec. 22 of the Ordinance, c. 32 of 1900, passed by the legislative assembly of the North-West Territories is intra vires and is not inconsistent with the provisions of Part LVIII. of the Criminal Code; since sec. 22 of said Ordinance merely provides another requisite preliminary to the right of appeal as provided by Code sec. 880. The omission of appellant to make the affidavit on the merits within the time prescribed by sec. 22 of said Ordinance, is fatal to the jurisdiction of the Judge to entertain the appeal, and the omission is such that it cannot be waived. Cavanagh v. McIlmoyle, 6 C. C. C., 5 Terr. L. R. 235.

6. **Liquor License Ordinance N. W. T.**]—Held, that in order that an appeal might lie from conviction of a justice under the Liquor License Ordinance N. W. T., an affidavit on the merits must be filed by the appellant as provided by the amendment of 1900 to the ordinance, as a condition precedent to the right of appeal as given by the Consolidated Ordinance, c. 22, s. 8, which makes applicable the provisions of Part LVIII. of the Criminal Code to appeals under any Ordinance from convictions by justices of the peace R. v. McLeod 6 C. C. C. 23, 5 Terr. L. R.. 245.

7. **N.W.T. Act**—Intoxicants—Permit—Municipal Ordinance—By-law — Licenses—Hotels—Places of Public Resort--Places where Liquid Refreshments are Sold—License Fee—Excessive Amount—Police Regulation—Revenue.]—The North-West Terri-

tories Act, s. 92, enacts inter alia that no intoxicant shall be imported into the Territories or be sold, exchanged, traded, or bartered, or had in possession therein, except by special permission in writing of the Lieutenant-Governor. The Municipal Ordinance authorizes municipal councils to make by-laws for licensing, regulating, and governing inter alia, hotels, places of public resort, and places where liquid refreshments are sold ; and for fixing the sum to be paid for a license.—Held, that a permit from the Lieutenant-Governor did not dispense the holder from a compliance with a municipal by-law passed under the above mentioned provision of the Municipal Ordinance. Held, that, assuming that the power to impose a license under the Ordinance was intended as a power to make police regulation and not for the purpose of raising a revenue (but semble, contra), a by-law imposing a license fee of $100 was valid against the objection that the fee was excessive. THE QUEEN v. SALTERNO. THE QUEEN v. MCKENZIE. THE QUEEN v. TUMULTY, 1 Terr. L.R. 301.

IV. MISCELLANEOUS.

1. **Inland Revenue License to Brewer.]**—Notwithstanding the fact that a brewer holds a license from the Dominion Government, the local legislature has power to compel such brewer to take out a provincial license, to sell intoxicating liquors. R. v. NEIDERSTADT, 10 C. C. C. 292.

2. **Liquor License Act of Nova Scotia, 1895.]**—Under sec. 117 of the Liquor License Act of Nova Scotia a writ of certiorari cannot issue unless the party applying therefor files an affidavit denying the commission of the offence charged either by himself or agents, and the section applies as a condition precedent even where the main objection goes to jurisdiction of the convicting magistrate. R. v. BIGELOW, 2 C. C. C. 367, 31 N. S. R. 436.

3. **Ontario Election Act** — 2 EDW. VII. c. 33 (ONT.).]—1. It is intra vires of the Provincial Legislature of Ontario to delegate to the people the power to vote by referendum on a local statute, and thereby express whether the Act shall come into force, which if affirmatively given, would be followed by a proclamation bringing it into force. 2. Under sec. 4 of the said Act power is given to a county Judge to "conduct the trial" of any one accused of illegal voting thereunder, and the procedure of the Election Act is applied, and this power is sufficient to enable the Judge appointed to summon the person charged before him, to try him on the offence and to sentence him if guilty. 3. As the Judge was acting not as a county Judge but as a special court created by the Act, he had power to issue a summons in one county and to try the case in another county. R. v. WALSH, 6 C. C. C. 452, 5 O. L. R. 527.

4. **Right of Members of Militia to Purchase from Canteen.]**—The officers and men of the militia from the time of being called out for active service, and also during the period of annual drill or training, have an equal right with the members of the Canadian Infantry School Corps to purchase intoxicating liquors at the canteen. EX PARTE PATCHELL, 3 C. C. C. 75, 34 N. B. R. 358.

5. **Social Clubs** — DEVICE TO EVADE ACT.]—Steward dispensing intoxicating liquor at a fixed price is a sale. EX PARTE COULSON, 1 C. C. C. 31, 33 N. B. R. 428.

6. **Statute Imposing Both Fine and Imprisonment as Punishment** — DISCRETION OF COURT.]—Where a statute imposes as a punishment for an offence, both a fine and imprisonment, the court has a discretion, under Crim. Code sec. 932, to inflict either one or both unless the specific statute declares a contrary intention. REGINA v. ROBIDOUX, 2 C. C. C. 19.

7. **Unlawful Sale** — PLACE OF ACCEPTANCE OF ORDER — DELIVERY — R. S. N. S. 1900 at 100.]—The defendant's clerk sent an order to Halifax from Truro for a bottle of whiskey at the request of a purchaser. The order was filled and endorsed to be delivered from the Truro warehouse of the defendant :—Held, that to make a complete sale the article must be specified and appropiated, i. e. segregated so that the vendor may point to it as the one purchased, that therefore no sale was actually made until the defendant's clerk delivered the bottle in Truro; the transaction being completed there, that was the place of sale. Conviction therefore sustained. R. v. BIGELOW, 9 C. C. C. 322, 36 N. S. R. 554.

JOINDER OF OFFENCES

Riot and Assault—REVISED STATUTES, CAP. 147.]—Counts for riot and unlawful assembly under the Rev. Stat. Title XXXIX., c. 147 (Consol. Stat. p. 1084), being misdemeanours, may be joined in an indictment with a count for assault. REGINA v. LONG ET AL, 25 N.B.R. 208.

See also INDICTMENTS—JURY.

JUDGE.

1. **Failure to Take Objection at Trial.**]—The Deputy Recorder of the City of Montreal having to take the oaths of office and allegiance, and no objection being made by the defendant at the trial, it was held that while sitting on the case he was a Judge de facto, and the judgment which he rendered was valid and binding. EX PARTE THOMAS CURRY, 1 C.C.C. 532.

2. **Judge**—FAILURE TO TAKE OATHS OF OFFICE AND ALLEGIANCE—JUDGE DE FACTO.]—All persons who are appointed to judicial offices are required before assuming authority and acting in their judicial capacity, to take the oath of allegiance, and the judicial oath. This rule was held to apply to the Deputy Recorder, of the city of Montreal, though appointed under the charter of the city, and as the objection was raised at the trial, he was held not to be a judge de facto, and a conviction by him was quashed. EX PARTE ELIZA MAINVILLE, 1 C.C.C. 528.

3. **Judge of Sessions** — ACTING FOR RECORDER — CONVICTION — JURISDICTION.]—A conviction and sentence rendered by a Judge of the sessions of the peace, acting for the recorder of Montreal, are valid. DESCHAMPS v. VALLEE, 7 Q.P.R. 231.

JUDGE'S CHARGE.

1. **Comment of Judge**—RESERVED CASE —APPLICATION FOR AFTER SENTENCE.]—On the trial of a prisoner indicted for stealing, the Judge, in his charge to the jury, called attention to the fact that the prisoner 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 added, if he were an innocent man he could have proved that at the time of the offence he was not in the vicinity where the theft took place :—Held, that this was "comment" within the meaning of s. 4 (2) of the Canada Evidence Act, 1893. It was not too late after the sentence had been imposed to ask to have a case reserved for the opinion of the Court. REX. v. MCGUIRE, 36 N.B. REPS. 609.

2. **Comment on Prisoner's Failure to Testify.**]—On a charge of theft the trial Judge in charging the jury, in referring to a witness for the defence remarked "If you do not see fit to believe her, then you are brought face to face with the fact that the prisoner is found in possession of a stolen pouch, and that he has not given a satisfactory account of how he came into possession of it" :—Held, that such comment was not a comment on the failure of the prisoner to testify within the meaning of the Canada Evidence Act. R. v. BURDELL, 10 C. C. C. 365.

3. **Doubt** — INSTRUCTING JURY ON.]—The Judge should charge the jury on the question of doubt, when he deems such instruction justified by the nature of the evidence and not otherwise, as where he considers no doubt exists, in which case any instruction on the question would tend to obstruct rather than facilitate the administration of justice. R. v. FONQUET, 10 C.C.C. 266.

4. **Duty to Define Crime**—NEW TRIAL.] —It is the duty of the Judge in a criminal trial with a jury to define to the jury the crime charged and to explain the difference between it and any other offence of which it is open to the jury to convict the accused. Failure to so instruct the jury is good cause for granting a new trial, and the fact that counsel for the accused took no exception to the Judge's charge is immaterial. After the case for the Crown and defence was closed the Crown called a witness in rebuttal whose evidence changed, by a few minutes, the exact time of the crime as stated by the Crown's previous witnesses and which tended to weaken the alibi set up by the accused : Held, that to allow the evidence was entirely in the discretion of the Judge, and there was no legal prejudice to the accused as he was allowed an opportunity to cross-examine and meet the evidence. REX v. WONG ON AND WONG GOW, 10 B. C. R. 555.

5. **Sufficiency of.**]—In summing up, the trial Judge explains the questions in dispute, with law bearing on them ; pointing out on whom the onus of proof lies ; and recapitulating the evidence with such comment and observations as may seem fitting. R. v. FONQUET, 10 C. C. C. 263.

See also EVIDENCE—NEW TRIAL — PRISONER.

JUDGMENT.

1. **Several Charges Included In.**]—Under the provisions of sec. 188 of the Ontario Elections Act, any number of corrupt offences charged as having been committed by the defendant at the same election are intended to be tried together, and to be included in the same judgment, and it is not necessary to adjudicate on each charge before hearing the evidence on the other charge. RE A. E. CROSS, 4 C. C. C. 173.

JUDICIAL NOTICE.

Territorial Division.]—A warrant of commitment was made by the stipendiary magistrate for the police division of the municipality of the county of Picton in Nova Scotia, upon a conviction for an offence stated therein to have heen committed "at Hopewell, in the County of Pictou." The county of Pictou appeared to be of a greater extent than the municipality of the county of Pictou—there being also four incorporated towns within the county limits—and it did not specially appear upon the face of the warrant that the place where the offence had been committed was within the municipality of the county of Pictou. The Nova Scotia statute of 1895, respecting county corporations (58 Vict. c., s. 8), contains a schedule which mentions Hopewell as a polling district in Pictou county entitled to return two councillors to the County Council :—Held, that the Court was bound to take judicial notice of the territorial divisions declared by the statute as establishing that the place so mentioned in the warrant was within the territorial limits of the police division. EX PARTE JAMES W. MACDONALD, 27 S. C. R. 683.

JURISDICTION.

1. **Abduction**—CRIM. CODE 283—PERSUASION BY LETTERS RECEIVED IN FOREIGN COUNTRY.]—Letters received by a girl in the United States from the prisoner persuading her to come to him in Canada are not evidence against him on a charge of abduction under Sec. 283 of the Criminal Code, as the inducement constitutes part of the offence and the act of persuasion both effect beyond the jurisdiction of the Court. REGINA v. BLYTHE, 1 C. C. C. 263, 4 B. C. R. 276.

2. **Appeal** — STATUTORY PREREQUISITES.]—1. Where a statute lays down certain prerequisites providing for the taking of an appeal, all the requirements of the statute must be complied with, for want of jurisdiction which appears on the face of the proceedings cannot be waived. When such is the case, the Court must dismiss the appeal whether the point be raised by counsel or not. R. v. DOLIVER MINING CO., 10 C. C. C. 405.

3. **Arrest without Warrant** — INDECENT ASSAULT.—CONSENT TO SUMMARY TRIAL.] —The accused having been arrested for indecent assault though no warrant issued, and no information being before the magistrate, he has nevertheless jurisdiction to try the same summarily on the consent of the accused. REX v. MCLEAN, 5 C. C. C. 67.

4. **Assaulting Peace Officer.**]—An accused charged with wilfully obstructing a peace officer in the execution of his duty can be tried summarily by the magistrate under the summary conviction clauses of the Code, or he can be tried before a magistrate as for an indictable offence. THE KING v. NELSON, 4 C. C. C. 461, 8 B. C. R. 110.

5. **Canadian Railway Act**—LOCAL JUSTICES.]—Section 283 of the Railway Act providing for arrest of trespassers and the taking of the offenders before local justices, etc., in a county through which the railway passes, and giving to such justices a local jurisdiction, applies only to cases where the constable arrests the offender and takes him before the justice. It does not extend to a case where an information is laid and a summons or warrant issued. R. v. HUGHES, 2 C. C. C. 333, 26 O. R. 486.

6. **Certiorari** — Vagrancy — Payment of Costs and Fine.]—1. In the Supreme Court (of the Province of Quebec) every Judge thereof has jurisdiction to review on certiorari every decision rendered by a justice of the peace even in criminal matters. 2. It is ultra vires of a justice or recorder on a conviction for vagrancy to condemn the accused to a fine and to costs, and to order that in case the petitioner should not pay the fine and costs, that she should be imprisoned until such costs, and also the costs of conveying her to gaol be paid, as a condition of her discharge. Leonard v. Pelletier, 9 C.C.C. 19, Q. R. 24. S. C. 331, 6 Q. P. R. 54.

7. **Change of Venue**—After Commitment—Indictment for Offence arising in County other than that where Trial took place.]—The offences with which the prisoner was charged, were committed in the county of Dufferin, and he was committed for trial at the general sessions for that county, on one charge only, of the offences charged in the indictment which was afterwards preferred against him :—Held, that an indictment could be preferred as well for any charge founded upon the facts or evidence disclosed by the depositions taken before the justice, as for the charge for which the accused was committed for trial. The fact that the order changing the venue omitted to provide for the payment of any additional expense thereby caused to the accused, does not invalidate the order, where it was not made to appear to the Judge, that additional expense would be occasioned to the accused, or where the Judge was not asked to impose such a condition. R. v. Coleman, 2 C. C. C. 529, 30 O. R. 93.

8. **Converting Charge over which no Jurisdiction to one of which there is Jurisdiction**—Certiorari.]—It is not competent for a magistrate where the 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 so to try it on the original information, and certiorari lies in such a case. Rex v. Dungey, 5 C. C. C. 38, 2 O.L.R. 223.

9. **County Court**—Speedy Trial.]—The jurisdiction of the County Court in Nova Scotia in the matter of a speedy trial, is not as regards "place" what is known as a local one ; application of Code sec. 609 to County Court records discussed. R. v. Smitheman, 9 C. C. C. 10, 35 C. S. C. R. 189.

10. **County Court.**]—A Judge of a County Court in New Brunswick has jurisdiction to try the offence of attempting to have carnal knowledge of a girl under fourteen, even though he thought from the evidence that there had been an attempt to commit rape. R. v. Wright, 2 C. C. C. 83.

11. **Election**—Speedy Trial—Proper Foreman—Code Sec. 787.]—1. When the accused is not in custody at the time a true bill is found by the Grand Jury or when the indictment is filed of "record," or when he has been arraigned and pleaded the forum becomes fixed, and jurisdiction is determinately established in the Court where the record is filed. The case cannot then be removed from it even on consent of the Crown and the accused, since consent cannot confer jurisdiction in criminal prosecutions. R. v. Komiensky, 6 C.C.C. 524.

12. **Extradition** — Issue Warrant.]—The jurisdiction of extradition commissioners is limited to the province for which they are appointed, and a warrant issued by an extradition commissioner for the arrest of a fugitive criminal who is neither within, nor suspected to be within, his territorial jurisdiction, is irregular and illegal. Ex Parte Seitz, 3 C. C. C. 54, Q. R. 8 Q. B. 345.

13. **Federal Judge in Habeas Corpus.**]—The jurisdiction of a Judge of the Superior Court of Canada in matters of habeas corpus in any criminal case is limited to an enquiry into the cause of commitment as disclosed by the warrant of commitment. Ex Parte Macdonald, 3 C. C. C. 10, 27 S. C. R. 686.

14. **Federal Supreme Court Judge** — Habeas Corpus.]—In matters of habeas corpus, a Judge of the Supreme Court of Canada has equal and co-ordinate power with a Judge of a provincial Supreme Court, and is, therefore, not vested with appellate powers to void or reverse judgments of provincial courts on such matters. Rex v. White, 4 C. C. C. 430, 34 N. S. R. 436.

15. **Great Lakes.**]—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 inquire into offences committed on said lakes, although in American waters. REGINA v. SHARP, 5 P. R. 135.

16. **Illness of Witness** — REMOVAL OF COURT — CONSENT OF COUNSEL.]—Where witness is too ill to attend the trial, the Judge has power to order the removal of the court and jury to any place within the county. The accused is bound by consent of his counsel, it being a matter which does not go to jurisdiction. R. v. RODGERS, 6 C. C. C. 419, 36 N. B. R. 1.

17. **Inferior Court** — STATEMENTS IN ADDITION TO STATUTORY FORM.]—Ordinarily, the jurisdiction of an inferior court should appear upon the face of its proceedings, but it is sufficient to follow the statutory form, and the addition of statements not showing want of jurisdiction does not invalidate it. PROCTOR v. PARKER, 3 C. C. C. 374, 12 Man. L. R. 528.

18. **Information for Damage to Property.**]—To oust the jurisdiction of the magistrate on an information charging damage to property, the act complained against must be done under a fair and reasonable supposition of right. An honest belief on the part of a person charged under sec. 511 of the Criminal Code is not sufficient. REGINA v. DAVY, 4 C. C. C. 28, 27 A. R. 508.

19. **Judicial Notice of Political Divisions into Provinces, Counties, etc.**]—Courts notice the territorial extent of its jurisdiction and sovereignty exercised de facto by their own government, and the local divisions, such as states, provinces, counties, cities, etc. EX PARTE MACDONALD, 3 C. C. C. 10, 27 S. C. R. 686.

20. **Justice of the Peace** — ASSAULT — REDUCING CHARGE — CERTIFICATE OF DISMISSAL WHEN IT OPERATES AS A BAR TO CIVIL ACTION.]—Justices of the peace have not, of their own motion, jurisdiction to reduce a charge of wounding with intent to do grievous bodily harm, to one of common assault, in order that they may proceed to dispose of it in a summary way; and a certificate of the justices as to dismissal of the charge is not a bar to a subsequent civil action in such a case. It is most important in cases of this kind to insist upon the principle that the right of justices to adjudicate be confined within the limits of the information. The mere presence of the party aggrieved as a witness at the hearing of the charge before the justices, where the complaint was laid by a peace officer, does not constitute such an acquiescence in the hearing as would amount to an election on his part to proceed summarily before the magistrate. It is only where he has elected to proceed summarily that his civil remedy is affected by the statutory bar. MILLER v. LEA, 2 C. C. C. 282, 25 A. R. 428.

21. **Justice of the Peace** — INTERFERENCE WITH ANOTHER JUSTICE.]—Where one justice or magistrate issues a summons and the defendant appears and pleads, that justice is seized of the case, and no other justice has a right to interfere in the adjudication except on request of the first justice. R. v. MCRAE, 2 C. C. C. 49, 28 O. R. 569.

22. **Justice** — MAGISTRATE — R. S. O. 1897, c. 87, s. 7.]—Where a police magistrate has been appointed for a town the jurisdiction of a justice of the peace to adjudicate there is taken away unless under certain circumstances, as set out in R. S. O. 1897, c. 87, s. 7. REX v. DUERING, 5 C. C. C. 135, 2 O. L. R. 593.

23. **Justice of the Peace** — SUMMARY TRIAL OF INDICTABLE OFFENCE — REDUCING CHARGE.]—A justice of the peace has no power to reduce a charge from one of unlawfully wounding with intent to do grievous bodily harm, to one of common assault, in order to bring it within his jurisdiction; and a conviction made on a plea of guilty, to such reduced charge is no bar to a subsequent indictment for unlawfully wounding, framed on the same facts; and will not support a plea of autrefois convict since the conviction pleaded is null and void. R. v. LEE, 2 C. C. C. 233.

24. **Magistrate** — ON CHARGE OF AGGRAVATED ASSAULT.]—A magistrate in Ontario has jurisdiction to sentence a prisoner tried summarily by consent for an aggravated assault to a term of imprisonment exceeding six months. REGINA v. ARCHIBALD, 4 C. C. C. 159.

25. **Magistrate** — Constitutional Law — Constitution of Criminal Courts.] —By s. 785 of the Criminal Code any person charged before a police magistrate in Ontario with an offence which might be tried at the general sessions of the peace may, with his own consent, be tried by the magistrate and sentenced, if convicted, to the same punishment as if tried at the general sessions. By an amendment in 1900 the provisions of this section were extended to police and stipendiary magistrates of cities and towns of other parts of Canada :—Held, that, though there are no courts of general sessions except in Ontario, the amending Act is not therefore inoperative, but gives to a magistrate in any other province the jurisdiction created in Ontario by s. 785. Though the organization of courts of criminal jurisdiction is within the exclusive powers of the legislature, the Parliament of Canada may impose upon existing courts or individuals the duty of administering the criminal law, and their action to that end need not be supplemented by provincial legislation. In re Vancini, 24 Occ. N. 265. 34 S. C. R. 621.

26. **Magistrate** — Under Liquor License Act, N. B. 1896.]—The jurisdiction of a magistrate to try a case under the Liquor License Act N. B. 1896 was not taken away by an application made by the accused to have the presiding magistrate called as a witness, such application being based on an affidavit of the accused that the magistrate was a material and necessary witness. Ex Parte Hebert, 4 C. C. C. 155, 34 N. B. R. 455.

27. **Magistrate's Power to Amend Invalid Conviction.**]—A conviction imposing imprisonment with hard labour, which penalty was in excess of the jurisdiction of the magistrate, was amended upon the return made to certiorari proceedings, and the amended conviction was upheld. The original adjudication imposing hard labour was not acted on; if it had been, the defect could be cured by returning a valid conviction. Regina v. McAnn. 3 C. C. C. 110, 4 B. C. R. 587.

28. **Magistrate** — Code Sec. 785.]—Police magistrates in cities and incorporated towns have now jurisdiction to try by consent of accused, offences for which he might be tried at a court of general sessions of the peace. R. v. Bowers, 6 C. C. C. 264, 34 N. S. R. 550.

29. **Magistrate** — Perjury — Summary Trial.]—A magistrate has jurisdiction to adjudicate summarily upon a charge of perjury where the accused consents. Rex v. Burns, 4 C. C. C. 330, 1 O. L. R. 341.

30. **Mailing False Statement as to Finances of Trading Co.** — Code Sec. 365.]—Prisoner was charged with having at Montreal made, circulated and published certain false statements of the financial position of the company with intent to defraud its creditors, etc. The evidence showed that the false statements in question were enclosed in a letter addressed and mailed at Penetanguishene to Thibaudeau Bros. at Montreal where it was received by the latter. It was contended that on the mailing at Penetanguishene the offence charged was complete, and the court had therefore no jurisdiction :—Held, that since the parties intended to be defrauded resided in Montreal, and it was there that they were reached, and the intended fraud achieved, the defendant had of his free will accepted the jurisdiction of the court, by doing an act the intended result of which was to take place at Montreal. R. v. Gillespie, (No. 2) 2 C. C. C. 309.

31. **Objection as to** — When Open to Appeal.]—When a conviction has been entered under the Summary Convictions Act of B. C. any objection that the bylaw under which the conviction was made is ultra vires, and not opened to be raised on the hearing before the magistrate. R. v. Bowman, 6 B. C. R. 271, 2 C. C. C. 89.

32. **Order Made out of Term** — Nullity — Recourse — Abuse of Process.]—A bill was preferred against the defendant, at a criminal sittings, which the grand jury ignored. Thereupon an application was made to the presiding Judge for an order directing the prosecutor to pay costs. Judgment was reserved, and on the 8th October the court adjourned sine die. On the 10th the Judge filed a memorandum stating that he granted the application, and accordingly made an order dated the 8th. Prosecutrix appealed :—Held, per Meagher, J., (Ritchie, J., concurring), there being no appeal in criminal matters except as provided by statute, there was no jurisdiction in the court, inherent or otherwise, to enable

it to entertain the matter. If, however, the order was properly made, the delay between the 8th and 10th being occasioned by the act of the court, the parties should not be prejudiced, and it properly read nunc pro tunc. Per Graham, E. J., (Henry, J., concurring), the order was bad, even if made in a civil case, there being no judgment of the date it bore, and there being no special circumstances to warrant an order nunc pro tunc. That the court retains all original and inherent powers in criminal matters of the old court of Queen's bench, not specially divested by statute, and (following In re Sproule, 12 S. C. C. 140), should set aside such order, on which execution might issue, to prevent an abuse of process. REGINA v. MOSHER, 32 N. S. R. 139.

33. **Power to Hear Appeals from Criminal Court.**]—The power to hear cases reserved from the criminal court, or appeals, or other applications, in relation to matters pending or determined therein, is not an original nor an inherent jurisdiction, but is statutory and in respect to reserved cases appellate only. REGINA v. MOSHER, 3 C. C. C. 312, 32 N. S. R. 139.

34. **Provincial Legislation on Lotteries Ultra Vires.**]—A provincial legislature has no power to authorize a lottery, such legislation being an undue interference with the criminal law of the Dominion. BRAULT v. ST. JEAN BAPTISTS ASSOCIATION, 4 C. C. C. 284, 30 S. C. R. 598.

35. **Provinces** — JURISDICTION — PROCEEDINGS IN ANOTHER PROVINCE.]—A court of one province has no jurisdiction over a justice of a Judge in another province to direct proceedings or the hearing further evidence under sec. 752 of the Criminal Code. REGINA v. DEFRIES, 1 C. C. C. 207, 24 O. R. 645.

36. **Question of Law** — SUSCEPTIBLE OF BEING RESERVED.]—Whether a Judge or magistrate in any matter has jurisdiction to act, depends on the construction of the law under which he claims to act, and is essentially a question of law, and therefore susceptible of being reserved for the opinion of a court of appeal under sec. 743 of the Criminal Code. R. v. PAQUIN, 2 C. C. C. 135.

37. **Sale of Liquor** — CORPORATION — LIABILITY OF MANAGER.]—A magistrate has jurisdiction to convict the manager of an incorporated company for an offence under the Canada Temperance Act, where the clerk of the company under the manager's general directions sells spirituous liquors in contravention of said Act. EX PARTE BAIRD, 3 C. C. C. 65, 34 N. B. R. 213.

38. **Stipendiary Magistrate for County** — JURISDICTION IN TOWN.]—R. S. N. S., c. 33 confers jurisdiction on stipendiary magistrates throughout the whole of the county for which appointments are made. Where a stipendiary has been appointed for a town, but nothing being said as to such stipendiary having exclusive jurisdiction over offences within its limits, it was held that the county stipendiary magistrate had jurisdiction to try offences committed in the town. REX v. GIOVANETTI, 5 C. C. C. 157, 34 N. S. R. 505.

39. **Superior Court of Quebec** — PENAL MATTERS.]—The Superior Court of the Province of Quebec has jurisdiction over all inferior convictions of inferior courts in criminal matters. R. v. MERCIER, 6 C. C. C. 44.

40. **Theft by Agent** — CONTINUATION IN DIFFERENT DISTRICTS — JURISDICTION] —Theft by agent resembles embezzlement and consists not of one act, but in a continuity of operation, and a magistrate in either the district where the beginning was made, or in the district where the continuation of completion took place has jurisdiction. REGINA v. HOGLE, 5 C. C. C. 53.

41. **Trade Mark** — CHARGE AGAINST CORPORATION OF SELLING GOODS WITH FALSE DESCRIPTION.]—It is not within the jurisdiction of a magistrate to hear and dispose summarily of a charge against a corporation for selling goods to which a false trade description is applied. Such a charge is a subject of indictment only. R. v. T. EATON CO., 2 C. C. C. 252, 31 O. R. 276, 29 O. R. 591.

42. **Want of.**]—Onus of showing want of jurisdiction is on the prisoner. Sufficiency of Justice's designation on warrant of commitment. Where description of magistrate was "in and for the County of Labelle" when in fact no such title existed :—Held, insufficient. EX PARTE WELCH, 2 C. C. C. 35.

43. **Where no Committment.**]—The prisoner was arraigned before the County Court on a charge of larceny, and having elected to be tried under the speedy Trials Act, was acquitted. The prosecuting counsel then asked leave to prefer another charge under s. 12 of the Act, and upon the prisoner consenting to be tried was convicted (Code 773) :—Held, on a Crown case reserved, that having been acquitted of the charge for which the commitment read, he was entitled to his discharge and was no longer in custody, consequently he could not be tried on a fresh charge for which there was no commitment, and the Judge so trying him was without jurisdiction, as such cannot be conferred in criminal matters by consent. McDonald, C.J., dissenting. REGINA v. LONAR, 25 N.S.R. 124. REGINA v. SMITH, 25 N.S.R. 138.

See also APPEAL — CERTIORARI —CONVICTION—COURTS—ELECTION—EVIDENCE —EXTRADITION — HABEAS CORPUS — JUSTICE OF THE PEACE—NEW TRIAL— SPEEDY TRIAL—SUMMARY TRIAL.

JURY.

1. **Attending Church**—REMARKS IN SERMON.]—During progress of a trial for murder the jury, under the charge of a deputy sheriff, attended a church service. As part of his sermon on the "Prodigal Son," the preacher recognizing the presence of the jury, said that "though he realized that it was not for him to instruct them in the matter, yet he felt it was his duty to remind them that unless they were clearly satisfied of the guilt of the prisoners their judgment should be tempered with equity" :—Held, that the irregularity was not sufficient to nullify the verdict afterwards rendered. The remarks were in the interest of the prisoners, but if it could be shown that their interests were in anywise prejudiced, the proper recourse was to executive clemency. REGINA v. PREEPER, 22 N.S.R. 174, 15 S. C. R. 401.

2. **Assault**—QUESTIONS FOR JURY—MISDIRECTION.]—The prisoner was indicted on a charge of shooting with intent to do grievous bodily harm, the defence being justification in self-defence, and the trial Judge instructed the jury that the assault was over when the shots were fired, and that the prisoner in order to prove justification must show that he could not otherwise preserve himself from death or grievous bodily harm, and also that there was no evidence of any concerted attack on the prisoners. It was held that the questions whether the assault was all over when the shots were fired, and whether there was a concerted attack on the prisoner, were questions for the jury. Also that the instruction, that the jury in order to acquit prisoner must believe the accused could not otherwise preserve himself from death and grievous bodily harm, was plainly erroneous and prisoner discharged. REX v. RITTER, 8 C. C. C. 31, 36 N.S.R. 417.

3. **Challenge.**]—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 discretion 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 towards 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 affections. REGINA v. CHASSON, 3 PUG N.B.R. 546.

4. **Cause**—CHALLENGE FOR—INADVERTENT FAILURE TO CHALLENGE JUROR— EFFECT OF.]—Where through inadvertence a prisoner has failed to challenge a juror for cause, who was personally hostile to him, it is not a sufficient ground for a new trial. The remedy of prisoner lies in an appeal to the Crown to exercise the prerogative of mercy. R. v. HARRIS, 2 C.C.C. 75.

5. **Challenge 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 consent of counsel, M. was directed by the Crown to stand aside "till it was ascertained whether a jury could be empan-

elled 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 of 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 his 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, 38 U. C. R. 218.

6. **Challenge** — SEPARATE COUNTS — NUMBER OF PEREMPTORY CHALLENGES.]— The prisoner was indicted on two counts, the first being for unlawfully wounding with intent to do grievous bodily harm, and the second for assault. The prisoner claimed the right to sixteen peremptory challenges, on the ground that these counts before the Code would have been for a felony and misdemeanour on, and the Common law rule as to their non-joinder being abrogated by Crim. Code sec. 626 (1) and (2), he was under this section being tried on two indictments. It was held that the prisoner was only entitled under sec. 668 Crim. Code to twelve peremptory challenges, being the largest number allowed him on the first count of the indictment. It was necessary to add a count for common assault in order to get a conviction for that offence if the evidence warranted it. REX v. TURPIN, 8 C. C. C. 59, 24 Occ. N. 183.

7. **Challenges**—PEREMPTORY—"STAND ASIDE" BY CROWN—JOINT INDICTMENT.] —A peremptory challenge once taken cannot afterwards be withdrawn, when the panel is being called over a second time, otherwise it might operate as a fraud on the opposite party, by exercising the power of withdrawal after the opposite party had exhausted all his peremptory challenges. The Crown has the right to direct any number of jurors to 'stand aside' until the panel has been called over. To order a juror to 'stand aside' is virtually to challenge him for cause, postponing the consideration of the challenge till it has been seen whether a full jury can be formed without such. Both the Crown and the accused are entitled to any number of challenges for cause. When, however, panel has been called over without a jury being formed, the jurors who have been directed to "stand aside" are called again and then as each appears, he may be challenged by the accused, or the Crown may show cause against him, and if no sufficient cause be shown he may be sworn. On joint indictments each defendant has the right to the full number of his peremptory challenges; but a corresponding privilege is not given to the Crown; Crown is restricted to the number of peremptory challenges allowed to it in the case of the indictment against a single person. R. v. LALONDE, 2 C. C. C. 190.

8. **Challenge to Juror**—FAILURE TO CHALLENGE FOR CAUSE—NO GROUND FOR NEW TRIAL.]—Where through inadvertence a prisoner has failed to challenge a juror for cause who was personally hostile to him, it is not a sufficient ground to set aside the verdict and apply for a new trial; the only remedy left is to appeal to the Crown to exercise the prerogative of mercy. R. v. HARRIS, 2 C. C. C. 75.

9. **Clergyman Addressing Jury.**]—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, 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, 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 effect their verdict. PREEPER v. REGINA, 15 S. C. R. 401.

10. **Conspiracy**—CHALLENGE.] — 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. REGINA v. FELLOWE, 19 U. C. R. 48.

11. **Defamatory Libel**—Crown's Right to have Jurors Stand Aside.]—37 Vict. c. 38, s. 11, 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. Regina v. Patterson, 36 U. C. R. 127.

The Judge, at the trial, allowed the Crown counsel in such a case to direct jurors to stand aside, but, after the verdict, entertaining doubts, he reserved a case for the opinion of the 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 was a question of law which arose on the trial, within the meaning of the statute. Ib.

12. **Direction to Juror to Stand By**—Meaning of.]—The direction by the Crown for a juror to stand by, is in fact a deferred challenge for cause, and it is too late to exercise the challenge after the juror has taken the book to be sworn. Rex v. Barsalon, 4 C. C. C. 343.

13. **Disagreement** — Not Known at Time of Recording Verdict Reserved Case.]—An application for a reserved case was refused, and the statements under oath of the jury were held inadmissible to show that they disagreed with the rest on the verdict, but failed to make known this objection at the time of recording the verdict, as they had been informed that ten was a sufficient number to bring in a valid verdict. R. v. Mullen, 6 C.C.C. 262, 5 O.L.R. 373.

14. **Disagreement** — Second Trial — Same Panel.]—When a jury has disagreed and been discharged, and prisoner is again placed on trial, a new jury may be summoned from the same panel as the first jury was selected from. Rex. v. Gaffin, 8 C. C. C. 194.

15. **Exclusion of, during Inquiry as to Admissibility of Dying Declaration**—Comment on Prisoner's Failure to Testify.—Motion for Leave to Appeal to the Court of Criminal Appeal:—Held, that the jury should not be excluded during the preliminary inquiry as to whether certain evidence is admissible as a dying declaration. 2. A prisoner at his trial has the option of making a statement not under oath or of giving evidence under oath. 3. A direction to the jury than an accused has failed to account for a particular occurrence, when the onus has been cast upon him to do so, does not amount to a comment on his failure to testify, within the meaning of s. 4, s.-s. 2, of the Canada Evidence Act, 1883. Rex v. Aho, 25 Occ. N. 50; 11. B.C. R. 114.

16. **Felony**—Polling Jury — Jury Separating—Refreshments for Jury.]—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, also, the prisoner being convicted of a 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, 1. Terr. L.R. 379.

17. **Formation of**—Mis-trial.] — The Crown only has the right to direct jurors to stand by when the panel is called over for the first time, and where the trial Judge ruled that the Crown had a right to direct jurors to stand by a second time, such ruling was erroneous, and the effect of such ruling and of the consequent formation of the jury constituted a mistrial. Regina v. Boyd, 4 C. C. C. 219.

18. **Functions of Judge and Jury in Construction of Advertisement offering for Sale a Drug to Cause Miscarriage.**]—In the construction of the intended representation held out in an advertisement offering for sale a drug to cause miscarriage, it is for the Judge to say whether the document is capable of bearing the meaning assigned to it, and for the jury to say

whether as a matter of fact under all the circumstances it does show that meaning or not. R. v. KARN, 6 C. C. C. 479, 5 O. L. R. 704.

19. **Grand Jury** — CAN BE INCLUDED IN ORDER SUMMONING PETIT JURY.]—Both the grand jury and the petit jury can be summoned by the same order to the sheriff or the coroner. REGINA v. MCGUIRE, 4 C. C. C. 12, 34 N. B. R. 430.

20. **Grand Jury** — CONSTITUTION OF — LIMITATION OF NUMBER BY PROVINCIAL STATUTE — WHETHER INTRA VIRES.]—It is within the power of the provincial legislature to fix the number of grand jurors, who shall compose the grand jury panel, that being part of the organization and constitution of the court. But the legislature has no power to fix the number of grand jurors necessary to concur in finding a true bill of indictment, as that is a matter of criminal procedure, and exclusively intra vires of the Dominion Parliament. R. v. COX, 2 C. C. C. 207, 31 N. S. R. 311.

21. **Grand Jury** — CONSTITUTION OF, IN B. C. — DEMENTED JUROR — VOID PROCEEDINGS.]—For the purpose of criminal procedure in British Columbia, a grand jury is "constituted after thirteen have been summoned by the sheriff and a sufficient number of those (i. e. seven under the Juror's Act B. C.) so summoned have appeared and taken their places in the box, ready to be duly sworn to discharge the duties of their office and where the sheriff only summoned twelve, omitting to summons the thirteenth because he had become demented, it was held that the jury had not been "constituted" and its proceedings were void ab initio. REX v. HAYES, 7 C. C. C. 453, 9 B. C. R. 574.

22. **Grand Jury** — CONSTITUTION OF — JUDGE'S CHARGE — MISDIRECTION.]—1. The names of all the grand jurors summoned were called, but only eleven answered the roll. Ten were sworn in. :—Held, that the jury was properly impanelled, it not being necessary that all twelve jurors should be sworn. 2. The Judge concluded his charge on a trial for murder as follows, "The verdict of the jury is generally resumed in a few words, in the solemn words of guilty, or not guilty." :—Held, that such was not a misdirection, where the Judge in another portion of the charge explained to the jury the difference between manslaughter and murder, and further instructed on the question of malice. 3. The Judge should charge the jury on the question of doubt, when he deems such an instruction justified by the nature of the evidence, and not otherwise, as where he considers no doubt exists. 4. The condition precedent to a motion for a new trial on the evidence, is that the trial Judge should grant leave to apply to the court of appeal for such a new trial. R. v. FONQUET, 10 C. C. C. 255.

23. **Grand Jury** — CONSTITUTION OF — INDICTMENT.]—A sheriff, when about to summon, pursuant to s. 48 of the Juror's Act one of the jurors drafted to serve on a grand jury, ascertained that the juror was demented and did not summon him :—Held, that the grand jury was not legally constituted, and that an indictment found by the jurors who had been summoned must be quashed. A motion to quash such an indictment is not an objection to the constitution of the grand jury within the meaning of s. 656 of the Criminal Code. REX v. HAYES, 23 Occ. N. 342, 9 B. C. R. 574.

24. **Grand Jury** — CONSTITUTION OF — QUALIFICATION OF JUROR — PREJUDICE — MOTION TO QUASH INDICTMENT — RESERVED CASE.]—An objection to the qualification of an individual member of a grand jury is not an objection to the "constitution" of the grand jury within the meaning of s. 656 of the Criminal Code, and so cannot be raised by motion to quash an indictment. The question as to whether or not a grand juror is prejudiced, is for the Judge of assize to decide, and his decision cannot be reviewed on a stated case. REX v. HAYES, 11 B. C. R. 4, 23 Occ. N. 342, 9 B. C. R. 574.

25. **Grand Jury** — DRAFTING — VIOLATION OF STATUTE.]—Where the prothonotary had drawn twelve new men as grand jurors while the statute required that only the first six names should be omitted from the jury list, and that six new names should be drawn to supply the places of those omitted it was held that the grand jury was improperly drawn. REX v. DONALD MCDOUGALL, 8 C. C. C. 283.

26. **Grand Jury** — Failure to Send Preliminary Depositions to Grand Jury — Quashing Indictment.]—An indictment by the grand jury is properly found though the clerk of the Crown did not send to the grand jury the depositions taken on the preliminary enquiry as required by sec. 760 of the Crim. Code. Rex v. Turpin, 8 C. C. C. 59, 24 Occ. N. 183.

27. **Grand Jury** — Formation and Number — True Bill — Rejection.]—Where eleven grand jurors answered their names when the roll was first called, but only ten were impanelled and sworn (one having failed to answer on the second calling), the grand jury was properly formed; and the accused, having suffered no prejudice thereby, cannot, on that ground, move for the rejection of the true bill found against him. Rex v. Fouquet, Q. R. 14 K. B. 87.

28. **Grand Jury** — Indorsing Names of Witnesses on Indictment — Abortion — Form of Indictment.]—The provisions of s. 645 of the Criminal Code, requiring the names of all witnesses examined by the grand jury to be indorsed on the bill of indictment, are directory only, and an omission so to indorse does not invalidate the indictment. An indictment under s. 273 of the Code charging accused "with unlawfully using on her own person....with intent thereby to procure a miscarriage (without stating whose miscarriage) is sufficient. Rex v. Holmes, 22 Occ. N. 437, 9 B. C. R. 294.

29. **Grand Jury** — Initialing Names of Witnseses Sworn on Indictment not Essential.]—Section 745 of the Code specifying that the foreman of the grand jury, or any member of the grand jury so acting for him shall initial the names of each witness, sworn and examined, on the bill of indictment, is directory only, and failure to affix such initials would not constitute good ground for quashing an indictment. Regina v. Townsend, 3 C. C. C. 29, 28 N. S. R. 468.

30. **Grand Jury** — Interest of Jurors in Subject Matter of Prosecution on Motion to Quash — Objection to Constitution of.]—Prisoner was convicted of having obtained money under false pretences. At the trial after arraignment, but before plea pleaded, a motion to quash the indictment was made on the ground that one of the grand jurors was the agent of the prosecutor in the transaction of the matter out of which the prosecution arose, and was therefore not indifferent as between the prisoner and the Crown :—Held, on a reserved case, that such objection did not go to the constitution of the grand jury. Per Martin, J., the question of prejudice is a question for the trial Judge at the court of assize. R. v. Hayes, 9 C. C. C. 101, 11 B. C. R. 4.

31. **Grand Jury** — Instructing.] — A Judge has no power to order, that depositions taken abroad under Statutes of Canada, c. 37, s. 23, shall be read before the grand jury. The grand jury has a right to judge of what material it will use, which may not be inquired of by the Judge. (McDonald, C. J., contra.). Regina v. Chetwynd, 23 N. S. R. 332.

32. **Grand Jury** — Legislative Powers.]—The Provincial Act of 1898, c. 38, reduced the number of grand jurors necessary to a panel from 24 to 12; and the number necessary to return a true bill from 12 to 7. A conviction having been made on a bill found by a panel where only 10 of 12 summoned attended and were empanelled :—Held, quashing the conviction, that under the British North America Act, the Province may fix the number of jurors necessary to form a panel, that being a matter connected with the constitution of a criminal court (Townsend, J., not deciding, Henry, J., dubitante); but may not fix the number of that panel necessary to find a true bill that being a matter of criminal procedure, and as such exclusively of federal jurisdiction. Regina v. Cox, 31 N. S. R. 311.

33. **Grand Jury** — Panel not Complete Through Absence of Juror — Number Necessary to Find True Bill.] —Twelve jurors were summoned to act on the grand jury, but only eleven appeared and were sworn. On a motion to quash on ground that no true bill can be found, and reported by a grand jury unless there be at least twelve jurors present :—Held, that by sec. 662 (2) of the Criminal Code whereby seven grand jurors might find a true bill, it was sufficient if seven or more of the panel appeared and were sworn. R. v. Girard, 2 C. C. C. 217, 7 Q. Q. B. 575.

34. **Grand Jury** — Perusal of 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, per Crease, J., that they were entitled to peruse the depositions without proof that the witness was too ill to travel or absent from Canada. Regina v. Howes, 1 B. C. R., pt. 11., 307.

35. **Grand Jury** — Perusal of Depositions.]—A grand jury have a right to look at the depositions taken upon preliminary examination, though some might not be admissible in evidence on the trial for want of proof of absence of the deposing witness from Canada. Regina v. Howes, 1 B. C. R., pt. 11., 11.

36. **Grand Jury** — Recommending No Bill — Termination.]—Where a bill of indictment laid before the grand jury was returned by them into court with an indorsement "The Grand Jury recommend no bill," and no further proceedings are taken against the party, it is a termination of the prosecution. Alward v. Sharp, 1 Han. N. B. R. 286.

37. **Grand Jury** — Several Grand Juries can be Summoned.]—There is at common law, apart from any statutory authority, inherent power in the court to order one or more grand juries to be summoned. Regina v. McGuire, 4 C. C. C. 12, 34 N. B. R. 430.

38. **Grand Jury** — Swearing — Examination of Witnesses — Petit Jury — Challenge — "Verificateurs."]—It is not necessary that the accused should be present in court during the swearing of the grand juries. 2. The grand jury may examine the Crown witnesses in whatever order they choose, and the examination of a single one of such witnesses is not an irregularity nor an illegality, where it is admitted that the witness was able to establish a complete admission on the part of the accused. 3. Since the coming into force of the Criminal Code, it is not necessary that the first juror sworn should be added to the board of verificateurs who are to pass upon the challenge of the second juror : s. 668, Criminal Code. Rex v. Mathurin, Q. R. 12 K. B. 494.

39. **Grand Jury** — Swearing Jurors — Witnesses' Names in Indictment — Use of Preliminary Depositions — Code Sec. 645-656.]—1. Where the foreman of the grand jury was first called to the grand juror's box, and while alone in it took the oath; and the other jurors having been in different parts of the room, were then called up by divisions of three, and sworn to observe the same oath taken by the foreman, without the substance of the oath being repeated, the procedure was held to be irregular, and the presentment of the jurors invalid and null. 2. The provision of sec. 645 of the Code requiring the foreman to initial the name of each witness sworn and examined on the bill of indictment, is imperative. 3. Evidence submitted to the grand jury must be legal evidence. Depositions taken at the preliminary inquiry can only be read to the grand jury in cases where such depositions can be used as evidence before a petit jury. R. v. Belanger, 6 C. C. C. 295, 12 Q. K. B. 69.

40. **Grand Jury** — Swearing in — Foreman — Omission to Initial Names of Witnesses — Effect on Indictment — Submission of Record — Deposition — Crown Case Reserved.]—1. It is essential that, at the time the foreman of the grand jury is sworn, the other jurors be present and hear the oath taken by their foreman. And, therefore, where it appeared that none of the other jurors were in the box at the time their foreman was sworn, that there was no certainty that the oath taken by him was heard by them, that the other jurors were only sworn, afterwards, to observe the same oath which their foreman had taken, and that objection was duly made by motion to quash, before the arraignment of defendant, the indictment found by the grand jury was held to be null and void. 2. The omission by the foreman to initial the names of the witnesses examined before the grand jury, as required by law, is a fatal defect, and has the effect of annulling the indictment. 3. The submission of a record to the grand jury, in order that they may examine certain exhibits, and verify certain statements made by witnesses examined before them, is not a fatal irregularity, where it is proved that the decision of the grand jury was arrived at without reference to the depositions contained in such record.

4. The objections to the indictment above mentioned are proper grounds for a reserved case. BELANGER v. THE KING, Q. R. 12 K. B. 69.

41. **Grand Jury** — SWEARING OF — PRESENCE OF PRISONER — ORDER OF EXAMINATION OF WITNESSES — TRIERS.] —A prisoner has an absolute right to be present in court when the sheriff presents the panel of grand jurors. In the examination of witnesses the grand jury are free to, and may dispense with the examination of other witnesses. Since the Criminal Code it is not necessary that the first petit juror sworn be joined to the two triers named by the court to decide on the challenge of the second juror. REX v. MATHURIN, 8 C. C. C. 1, Q. R. 12 K. B. 494.

42. **Grand Jury** — VENIRE TO CORONER, WHERE SHERIFF DISQUALIFIED.]—The order of a superior court directing a coroner instead of the sheriff to summon a grand jury, need not show upon its face everything necessary to warrant its being issued. REGINA v. MCGUIRE, 4 C. C. C. 12, 34 N. B. R. 430.

43. **Insolvent Act** — SPECIAL JURY.]— Section 148 of the insolvent Act of 1869, provided that all offences punishable under that Act should be tried by a special jury. Section 141 of the Act of 1875, directed that all offences punishable under that Act should be tried as other offences of the same degree; and by section 149, as respects matters of procedure merely, the provisions of that Act should supercede the Act of 1869. In this case, before the trial, the Crown gave notice of and struck a special jury, who were in attendance at the trial, but the Crown, notwithstanding, elected to call and try the case by a common jury. The prisoner's counsel objected thereto, and the case proceeded, the prisoners entering into a full defence, but subject to such objection, which was renewed at the close of the case, with the further objection that there had been a mistrial which the prisoners under the circumstances had not waived their right to insist upon; and that this was a "question of law which arose on the trial," which might properly be reserved, and not an objection to be raised by challenge to the jury. REGINA v. KERR, 26 C. P. 214.

44. **Inspection of Panel** — PROVINCIAL ACT GOVERNING — CODE SEC. 662.]— 1. In regard to jury lists, Parliament has been content to adopt and utilize the lists prepared by the local authorities for local purposes; and while using such it must be 'cum onere' that is with such limitations and conditions as the local legislature has imposed. 2. Therefore under the Ontario Act 58 Vict. c. 15, an accused person has no right to inspect the panel of the petit jury until six days before the sittings of the court. CHANTLER v. ATTORNEY-GENERAL, 9 C. C. C. 465, 9 O. L. R. 529.

45. **Irregularities** — ERROR.]—Semble, that under s. 139, C. S. U. C. c. 31, where no "unindifference" or fraudulent dealing of the sheriff is shewn, any irregularities are not assignable for error. REGINA v. O'ROURKE, 1 O. R. 464.

Quære, whether, when such a question has been reserved by a Judge at the trial, it can afterwards be made the subject of a writ of error. IB.

46. **Joint Indictment** — WHERE JURY DISAGREE AS TO GUILT OF ONE PRISONER AND FIND THE OTHER GUILTY — CONVICTION — WHETHER WARRANTED.]— H. and W. were jointly indicted and tried for stealing. On the trial H. was found guilty, but the jury were unable to agree upon the verdict as to W., and were discharged from giving a verdict as to him :— Held, that the verdict warranted the conviction of H. REGINA v. HAMILTON AND WALSH, 23 N. B. R. 540.

47. **Jury de medietate linguae** — ALIENS NOT ENTITLED TO—ALIEN MAY BE JUROR.] — Alien defendants are not entitled, in this Province, in any case civil or criminal, to a jury de medietate linguae. An alien may be a juror. QUEEN v. BURDELL ET AL., 1 Old., N. S. R. 126.

48. **Jury List** — OMISSIONS IN .]—The omission of the residences and occupations of grand jurors in the list, and in the panel, held sufficient grounds for quashing an indictment for felony. QUEEN v. BELYEA, James, N. S. R. 220. SEAMAN v. CAMPBELL, James, N. S. R. 94.

49. **Misdemeanour** — CROWN'S RIGHT TO MAKE JURORS STAND ASIDE.]—Upon the trial of a party indicted for misde-

meanour, the Crown has a right to cause jurors to stand aside until the whole panel is gone through. REGINA v. BENJAMIN, 4 C. P. 179.

50. **Mistrial** — VENIRE DE NOVO.]—An order to summon nine jurors is not authorized by 47 Vict. c. 14, s. 5 and a trial by jury selected from such jurors and the twelve petit jurors summoned under Consol. Stat. c. 45, s. 10, is a nullity. In such case a venire do novo should be awarded. REGINA v. ENGLISH, 31 N. B. R. 305.

51. **Mixed Jury** — QUEBEC — RIGHT TO — RELINQUISHMENT OF RIGHT.]—27-28 Vict. c. 41, s. 7 (2) confers the right to a mixed jury in the Province of Quebec. This is a matter of criminal procedure and a provincial legislature cannot abrogate the right. When the order for a mixed jury has been made the accused cannot ask as a matter of course that the order be superseded, but the court in its discretion may do so. REGINA v. SHEEHAN, 1 C. C. C. 402.

52. **Mixed Jury** — RIGHT TO — LANGUAGE OF THE DEFENCE — CODE SEC. 664-670.]—The right to have a mixed jury in the Province of Quebec is given by s.-s. 2 of sec. 7 of the Statute of the Provinces of Canada 27 & 28 Vict. c. 41. The part of this statute relating to organization of criminal courts was repealed by the Provincial Legislature of Quebec; but the right to a mixed jury half of which should be of men speaking the language of the defence, was a matter of criminal procedure, and therefore ultra vires of the Quebec Legislature and is still in force. The privilege of obtaining a mixed jury is a personal one with the prisoner, and belongs of right to an accused person whose language is either English or French and it is not therefore for convenience of counsel. This privilege cannot be exercised as a matter of choice but depends on a matter of fact, viz., the language of the accused person, and is therefore not a subject of election by prisoner's counsel. R. v. YANCY, 2 C. C. C. 320.

53. **Murder** — CHALLENGE FOR CAUSE — PEREMPTORY CHALLENGE IN DEFERENCE TO JUDGE'S VIEW.]—On a trial for murder the prisoner desired to challenge one S. one of the jurors called, for favour, 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, 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, held, also, 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. WHELAND v. REGINA, 28 U. C. R. Q, 108.

54. **Murder** — JUROR DISCHARGED AFTER BEING SWORN.]—Upon a trial for murder, after the usual notice of right of challenge, two jurymen were sworn without challenge. J. H. was then called, and a person came forward and was sworn. Others were called and challenged; and after another was called and sworn without challenge, the prisoner's counsel objected to J. H., as he was a witness in the case. Upon inquiry he was found not to be the person intended to be called on the jury, being not only a witness, but not a resident in the counties, and therefore not qualified as a juryman. Upon consent of counsel for the Crown and prisoner, he was allowed to retire, and others were called and sworn, the prisoner exercising the right to challenge, till the jury was chosen. After conviction, upon motion for a new trial :—Held, 1. That J. H. improperly sworn was legally discharged from the jury; 2. that the right of challenge as to those previously sworn was not thereby reopened, their reswear-

ing not being rendered necessary; 3. that the prisoner was properly tried by the twelve, although thirteen were sworn to try him. REGINA v. COULTER, 13 C. P. 299.

55. **N. W. T. Act, Sec. 67** — REFUSAL OF JUDGE TO TRY WITHOUT JURY.]—Where a prisoner consents to trial before a Judge alone under sec. 67 of the North-West Territories Act R. S. C. 1886, ch. 50, the Judge may refuse to accept such consent and may proceed with a trial by jury. REGINA v. WEBSTER, 8 C. C. C. 457, N. W. T., 2 Ter. L. R. 236. Also see paragraph 76.

56. **Omission to Challenge for Cause** — NO GROUND FOR NEW TRIAL — COMMUNICATION BETWEEN PARTY AND JUROR — WEIGHT OF EVIDENCE — NEW TRIAL.]—1. It is too late to challenge a juror for cause after verdict has been given, and the mere fact that a juror bore private enmity against prisoner, who failed to recognise him at the time when the jury was impanelled, is not sufficient ground for the avoidance of the verdict. The only remedy for such inadvertance is an appeal to the Crown for the exercise of the prerogative of mercy. 2. A verdict should be avoided and a new trial ordered whenever there has been a communication between a party to the case and a juror of a nature to affect and bias the latter's opinion; but though any communication is improper, yet an unpremeditated and innoxious conversation which could not affect the juror's mind and judgment cannot have such effect. 3. The credibility of any witness who may give evidence is a matter entirely within the scope of the inquiry of the jury; and they may attribute to such evidence whatever credit they think it entitled to, under all the circumstances; they are free to discredit some as unworthy of belief, and to accept others as veracious and worthy of credit. When therefore the jury has exercised this discretion, and their verdict is based on such evidence as they believed, it cannot be said to be against the weight of evidence. 4. In the case of a conflict in testimony when there is evidence to support the indictment, the jury can convict, since it is their province and not the Judge's, to pass upon the credibility of witnesses, and the sufficiency of evidence. But where the evidence tends indubitably in a direction favourable to the accused and there appears no real conflict, the convicting verdict would manifestly be against the weight of evidence; so where there has been an absolute failure of evidence to sustain the verdict, the trial Judge will grant leave to apply to the court of appeal for a new trial. R. v. HARRIS, 2 C. C. C. 75.

57. **Petit Jury** — CAN BE INCLUDED IN ORDER SUMMONING GRAND JURY.]—Both the grand jury and petit can be summoned by the same order to the sheriff or the coroner. REGINA v. MCGUIRE, 4 C. C. C. 12, 34 N. B. R. 430.

58. **Polling** — SEPARATING — REFRESHMENTS.]—In a prosecution for felony it is discretionary with the trial Judge to permit or refuse to allow the jury to be polled. The prisoner being convicted of felony, 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, were held not sufficient ground for discharging the prisoner, or for a new trial. REGINA v. MCCLUNG, 1 Terr. L. R. 379.

59. **Preliminary Inquiry as to Admissibility of Dying Declaration** — PRESENCE OF JURY.]—It is not incumbent on the Judge to exclude the jury during a preliminary inquiry as to the admissibility of a dying declaration. REX v. AHO, 8 C. C. C. 453.

60. **Prejudice** — AGREEMENT THAT MAJORITY SHOULD CARRY — EVIDENCE OF — INADMISSIBILITY — CHALLENGE FOR CAUSE.]—1. The fact that a juror has made remarks indicating a bias for or against the accused will not of itself furnish grounds for a new trial where the verdict does justice, and there is no reason to suppose the juror's views were not derived from the evidence. 2. Where a juror has been challenged for cause, the decision of the triers is final, and not appealable. 3. Evidence on affidavit of jurors tending to show an irregular agree-

ment among the jury that a majority vote should carry is inadmissible as contrary to public policy. R. v. CARLIN, 6 C. C. C. 365, Q. R. 12 K. B. 483.

61. **Procedure** — INTERLOCUTORY ORDER IMPERFECTLY DRAWN UP — EXHIBITING ORDER AS ACTUALLY MADE ON RETURN TO WRIT OF ERROR — REFUSING POLL OF JURY — JURISDICTION — RIGHT OF SUPREME COURT JUDGE TO TRY CRIMINAL CASES WITHOUT COMMISSION — JURORS — SUMMONING FROM LIMITED PART OF SHRIEVALTY UNDER JURORS ACT, 1883.]—Upon a writ of error after conviction for murder :—Held, (1) that where an order has been made orally and afterwards imperfectly drawn up, i.e., without specifying the terms upon which it was made, and such terms appear in the Judge's note made at the time of the application, it is proper in making up the record on a writ of error prayed, that a true and perfect order should be drawn up and placed on the record; (2) that the refusal of the Judge at the trial to allow the prisoner's counsel to poll the jury after the verdict, was not a matter that could be dealt with on a writ of error, and therefore should not appear in the record; (3) that assuming the Lieut.-Governor's commission to be void, the court was properly constituted without commission, under s. 14, Judicature Act, 1879, and the Assize Court Act, 1885; (4) following McLean's case, that the commission of oyer and terminer and general gaol delivery was sufficient, and that the Lieut.-Governor had power to issue it under s. 128, B. N. A. Act, 1867; (5) that the commission was exhausted by reason of the justices therein named having held under it courts of oyer and terminer in other districts of the Province; (6) that there was no objection to the summoning of jurors from a limited portion of the shrievalty, under the Jurors Act, 1883, as that Act in effect created new districts for the purposes of the administration of justice in criminal cases; (7) that the prescribing of the qualifications of jurors and the manner of preparing jury lists, by the Jurors Act, 1883, were not matters of "criminal procedure," within the meaning of s. 91, s.-s. 27 of B. N. A. Act, 1867, but were matters belonging to the organization of Provincial Courts, within the meaning of s. 92, s.-s. 14. and therefore intra vires of the Provincial Legislature; (8) that the venue was sufficiently stated in the record, and that the marginal venue, "British Columbia to wit," was at the lowest but an imperfect venue, and therefore cured by s. 23, Criminal Procedure Act, 1869 :—Held, per Crease, J., that the statement of the imposition of conditions in an order under s. 11, 32 & 33 Vic. c. 29, is not jurisdictional :—Held, per Begbie, C. J., that any application for an order for a change of venue under s. 11, should be made as early as possible after the commitment :—Held, per Gray, J., after argument before himself and brother justices, sitting as assessors on a case stated, that on a trial on a charge of felony, that the prisoner is not entitled in this Province, as of right, to have the jury polled; and that where, in such a trial after a verdict given, the prisoner's counsel moved to have the jury polled, but as the court perceived nothing to create a doubt respecting the agreement and concurrence of the whole jury, the motion was refused :—Held, that such refusal was proper. SPROULE v. REGINAM, 1 B. C. R., pt. II., 219.

62. **Provincial Jurisdiction.**]—By 32 & 33 Vict. c. 29, s. 44 (d), the selection of jurors in criminal cases is authorized to be in accordance with the provincial laws, whether passed before or after the coming into force of the B. N. A. Act, subject, however, to any provision in any Act of the Parliament of Canada, and in so far as such laws are not inconsistent with any such Act. By 42 Vict. c. 14, and 44 Vict. c. 6 (O.), the mode of selection of jurors in criminal cases, as provided by C. S. U. C. c. 31, as amended by 26 Vict. c. 44, was changed, by excluding the clerk of the peace as one of the selectors, and requiring the selection to be made only from those qualified to serve as jurors whose surnames began with the certain alphabetical letters, instead of from the whole body of those competent to serve as previously required. The jury in question were selected under these provincial Acts. Semble that 32 & 33 Vict. c. 29 (D.) was not ultra vires the Dominion Parliament as being a delegation of their powers and that the selection made in accordance with the provincial Acts was valid. REGINA v. O'ROURKE, 32 C. P. 388.

Quære, whether the selection and summoning of jurors is a matter of procedure, or relates to the constitution and organization of criminal courts. IB.

63. **Provincial Jurisdiction** — Challenge to Array.]—By 32 & 33 Vict. c. 29, s. 44 (D.), every person qualified and summoned to serve as a juror in criminal cases according to the lay in any Province, is declared to be qualified to serve in such Province, whether such laws were passed before the B. N. A. Act or after it, subject to, and in so far as, such laws are not inconsistent with any Act of the Parliament of Canada. By 42 Vict. c. 14 (O.), and 44 Vict., c. 6 (O.), the mode of selecting jurors in all cases, formerly regulated by 26 Vict. c. 44, was changed. The jury was selected according to the Ontario statutes, and the prisoner challenged the array, to which the Crown demurred, and judgment was given for the Crown. The prisoner was found guilty, and sentenced, and he then brought error :—Held, per Hagarty, C. J., that the Dominion statute was not ultra vires by reason of its adopting and applying the laws of Ontario as to criminal procedure. Per Armour and Cameron, J.J., that the objection raised by the prisoner was not a good ground of challenge to the array. Regina v. O'Rourke, 1 O. R. 464.

64. **Qualification of Juror** — Wrong Person Summoned and Sworn.]—B. having been found guilty of feloniously having administered poison with intent to murder, moved to arrest the judgment on the ground that one of the jurors who tried the case had not been returned as such. The general panel of jurors contained the names of Joseph Lamoureux and Moise Lamoureux. The special panel for the term of the court at which the prisoner was tried, contained the name of Joseph Lamoureux. The sheriff served Joseph Lamoureux's summons on Moise Lamoureux and returned Joseph Lamoureux as the party summoned. Moise Lamoureux appeared in court and answered to the name of Joseph and was sworn as a juror without challenge when B. was tried. On a reserved case it was held, that the point should not have been reserved by the Judge at the trial, it not being a question arising at the trial within the meaning of s. 259, c. 174, R. S. C. :—Held, also, that assuming the point could be reserved, s. 246, c. 174, R. S. C. clearly covered the irregularity complained of. Brisebois v. Regina, 15 S. C. R. 407.

65. **Right of Accused to Inspect Panel** — Provincial Statute — Absence of Dominion Legislature — Criminal Procedure.]—Appeal from order dismissing appellant's application for a mandamus to the sheriff of Middlesex commanding him to show to appellant or his agent for examination the panel of jurors at the Middlesex sessions, for the purpose of determining whether it would be necessary to strike a special jury for the trial of appellant upon a charge of receiving stolen cattle. Argued that s. 85 of c. 31 C. S. U. C. is still the law in criminal matters, because being matter of criminal procedure the Legislature had no power to pass 58 V. c. 15, s. 3 (O.), now R. S. O. 1897, c. 61, s. 94 imposing restrictions upon the disclosure of the names of the jurors and inspection of the panel, to relate to criminal matters : —Held, Osler, J. A., dissenting, affirming the judgment refusing the mandamus. Re Chantler and Cameron, 5 O. W. R. 574, S. C., sub nom. In re Chantler, 9 O. L. R. 529.

66. **Right of Crown to Make Jurors Stand Aside a Second Time.**]—When a panel had been gone through and a full jury had not been obtained the Crown on the second calling over of the panel was permitted, against the objections 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., that the question was one of law arising on the trial which could have been reserved under s. 259 of c. 174 R. S. C., and the writ of error should therefore be quashed. Per Ritchie, C. J., Strong and Fournier, J.J., that the question arose before the trial commenced and could not have been reserved, and as the error of law appeared on the face of the record the remedy by writ of error was applicable. Brisebois v. The Queen, 15 S. C. R. 421, referred to. Per Ritchie, C. J., Strong, Fournier, and Patterson, JJ., that the Crown could not without shewing cause for challenge direct a juror to stand aside a second time. The Queen v. Lacombe, 13 L. C. Jur. 259, overruled. Per Gwynne, J., that all the prisoner could complain of was a mere irregularity in procedure which could not constitute a mistrial. Morin v. The Queen, 18 S. C. R. 407.

67. **Right to an Appeal Against Summary Conviction**]—Upon an appeal against a summary conviction to the court of general sessions in Ontario, there is no right to demand a trial by jury. REGINA v. MALLOY, 4 C. C. C. 116.

68. **Right to Trial by** — ONTARIO ELECTIONS ACT.]—A person charged with having committed a corrupt practice or illegal act under the provisions of the Ontario Elections Act cannot demand a jury as of right. REX v. CARLISLE, 7 C. C. C. 470, 6 O. L. R. 718, 23 Occ. N. 321.

69. **Separating** — VERDICT.]—After the jury had been given in charge, one of the jurymen was taken with a fit and removed, in charge of the sheriff and his physician, to his residence. The remainder of the jury subsequently adjourned to the sick man's house, where, upon his recovery, a verdict of guilty was rendered :—Held, that after the verdict had been recorded, it could not be disturbed. QUEEN v. PETER, 1 B. C. R., pt. 1., 2.

70. **Separation of, During Trial** — WHAT SUFFICIENT TO AVOID VERDICT — ORDER UNDER c. 41, CONSOL. STAT. — COURT CAN INQUIRE INTO FACTS ALTHOUGH RETURN SHOWS PRISONER TO BE PROPERLY IN CUSTODY.]—The prisoner was tried before the York County Court on a charge of larceny and found guilty. During the trial by jury, while in charge of two constables, were allowed to separate by walking on different sides of the street. One or two other separations of a similar nature were complained of, but there was nothing to show that any of them had any conversation with any person not a juror, in reference to the case. This was brought to the notice of the County Court Judge, and an application was made to him to delay passing sentence, and to treat the verdict as a nullity. This application was refused, and the prisoner was sentenced and remanded to gaol, pending his removal to the penitentiary. An order to the keeper of the gaol having been obtained under the provisions of cap. 41 of the Consol. Stat. upon the return of this order :—Held, by Allen, C. J., Wetmore, Duff and Palmer, J.J., (Weldon, and King, J.J., dissentinng) that, although the return of the gaoler showed that the prisoner was properly in custody under the sentence of a court of competent jurisdiction, the court has power to inquire into the facts of the case, and that the prisoner is not bound to proceed by a writ of error. EX PARTE ROSS, 21 N. B. R. 257.

71. **Summoning Jury.**]—By proclamation published on the 15th day of December, 1866, the county of Peel was separated from York from and after the 1st of January, 1867. On the 23rd November preceding, the usual precept had been sent to the sheriff of the united counties for the winter assizes for York to be held on the 10th January, 1867, and the sheriff returned his panel to that precept, containing fifty-four jurors from York and thirty from Peel. Only those from York, however, attended, and the prisoner was tried by a jury de medietate, including six of these jurors, upon an indictment found and pleaded to, at the previous assizes in October. On motion for a new trial, or venire de novo because the precept and panel should have been for York only, not for the united counties :—Held, per Draper, C. J., that the objection, if available at all, must be taken by writ of error. Per Hagarty, J., no objection would lie. REGINA v. KENNEDY, 26 U. C. R. 326.

72. **Swearing Jurors Before Full Jury Drawn.**]—Where the jurors drawn were either set aside or rejected or sworn as they were drawn, and the number which might be thought sufficient to provide a full jury was not drawn before the jurors were called to be sworn, such omission cannot affect the impanelling of the jury. REGINA v. WEIR, 3 C. C. C. 262.

73. **Venire Facias.**]—It was objected on error to the record of a judgment on a conviction for murder that the only authority shewn being that of oyer and terminer, the award, "therefore let a jury thereupon immediately come," was unauthorised, and a special award of venire facias was requisite; nit :—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, C. S. U. C. c. 31 both have the same powers, and general precept to summon a jury being issued by oath before the assizes. WHELAN v REGINA, 28 U. C. R. 2.

74. **When Accused is Given in Charge to.**]—The accused cannot be said, strictly speaking, to be "given in charge to the Jury" until the jury is sworn and a motion to quash an indictment can be made after arraignment and the pleading of 'not guilty.' REGINA v. LEPINE, 4 C. C. C. 145.

75. **Valid Panel.**]—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 did not, and he had omitted the name of C, who had been summoned, whose name was, however, added to the list by the clerk of the Court. Twenty jurors, including C., were sworn, all of whom had been duly summoned.—Held, that the panel was valid. It is no ground for quashing an indictment that some of the grand jury were related to the officers who arrested the prisoner, neither is a sheriff disqualified from selecting and summoning the grand jury, because he directed the arrest. The inclusion of 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.
REGINA v. MAILLOUX, 3 Pug. N.B.R. 493.

76. **N.W.T. Act** — JURY — ACCUSED'S ELECTION — RE-TRIAL — NEW ELECTION — DUTY OF JUDGE — JUDGE'S POWER TO REFUSE TO TRY SUMMARILY.]—The North-West Territories Act, R.S.C. c. 50, s. 67 (section substituted by 54-55 Vic. (1891), c. 22), provides that "when the person is charged with any other criminal offence, the same shall be tried, heard and determined by the Judge with the intervention of a jury of six, but in any such case the accused may, with his own consent, be tried by a Judge in a summary way, and without the intervention of a jury."—Held, that the consent of the accused does not make it imperative upon the Judge to try the charge without the intervention of a jury. It appears to be assumed by the Court that where the accused had been tried by a Judge with the intervention of a jury who disagreed and were discharged and the accused was brought up again for trial, the Judge on the second trial might, had he seen fit, have on the accused's consent, tried him without the intervention of a jury. THE QUEEN v. BREWSTER (No. 1) 2 Terr. L.R. 353.

See also EVIDENCE — ELECTION — INDICTMENT — NEW TRIAL — JUDGE'S CHARGE — MISDIRECTION.

JUSTICE OF THE PEACE.

I. ACTIONS OR PROCEEDINGS AGAINST.
II. ADJOURNMENT OF PROCEEDINGS.
III. AMENDMENT.
IV. APPLICATIONS TO QUASH.
V. CIVIL CAUSES.
VI. COSTS.
VII. DISMISSAL OF PROCEEDINGS.
VIII. JURISDICTION.
IX. QUALIFICATION OF JUSTICE.
X. REVIEW OR APPEAL.
XI. WARRANTS.
XII. MISCELLANEOUS CASES.

I. ACTIONS OR PROCEEDINGS AGAINST.

1. **Breach of the Peace** — DETENTION PENDING BAIL.]—Where a person was brought before a magistrate on a charge of a threatened assault, and was ordered by the magistrate to find sureties to keep the peace which not being immediately able to do, he remained tn the custody of a police constable for three hours, during which time the magistrate frequently visited him to ascertain if he had found bail, he was taken to gaol, where he remained until the following morning, when he was discharged on bail being procured :—Held, that the order for commitment was good without being in writing, and that the magistrate was therefore not liable to trespass. LYNDEN v. KING, 6 O. S. 566.

2. **Case.**]—After a conviction is quashed case will not lie against a magistrate without proof of want of reasonable or probable cause and malice. BURNEY v. GORHAM, 1 C. P. 358.

3. **Case.**]—One A. went before the defendants, two justices, and swore that from circumstances mentioned he was afraid that the plaintiff would destroy his property; and he therefore prayed that

he might be bound over to keep the peace. Defendants thereupon, on plaintiff's refusal to find sureties, committed him to gaol :—Held, that 16 Vict. c. 180 clearly applied, and therefore only a special action on the case could be maintained. FULLERTON v. SWITZER, 13 U. C. R. 575.

4. **Causing Wrongful Arrest** — JURISDICTION — MALICE.]—R. S. 5th Series, c. 101, s. 11, requires, in actions against magistrates for official acts coming within their jurisdiction, allegation and proof of malice and want of reasonable and probable cause. By s. 12, where a magistrate has acted without jurisdiction, such need not be shown. Plaintiff brought action against a magistrate for illegally causing his arrest on a distress for non-payment of rates assessed under the Public Instruction Act, 1895. The jury found that there was no malice :—Held, as the magistrate had general jurisdiction in relation to the matter malice must be shown, and that departure by him from the forms of procedure laid down by the Act did not constitute an excess of jurisdiction, to bring the matter within the operation of s. 12 above. Also, before proceeding to enforce payment of rates, a magistrate is not bound to inquire into the validity of the assessment, in order to have jurisdiction. PARKER v. ETTER, 33 N. S. R. 52.

5. **Collection of Fine and Costs** — PRESUMPTION OF PROPER DISPOSITION — DUTY, WHERE CONVICTION QUASHED.]—Held, in an action against a justice of the peace to recover the sum of $15 paid to him as fine and costs, upon a conviction under a Territorial Ordinance, which was afterwards quashed, that it must be presumed, in the absence of evidence, that the moneys were properly applied, i.e., the fine transmitted to the Attorney-General, and the costs paid over to the complainant, for whom they were received by the justice as agent. There is no duty imposed on the justice in such case to obtain a refund. The justice's personal fees when retained by him are in effect paid to him by the complainant, against whom he had the right to retain them. KAUDITSKI v. TELFORD, 5 Terr. L. R. 48.

6. **Committal Without Prior Distress.**]—Defendant, a justice of the peace, convicted the plaintiff under C. S. U. C. c. 92, s. 18, of making a disturbance in a place of worship, and committed him to gaol without first issuing a warrant of distress, whereupon the plaintiff brought trespass. It appeared at the trial that the plaintiff was well known to the defendant, and a boy living with his parents, and having no property :—Held, that the action would not lie, for defendant was authorized by C. S. C. c. 103, s. 59, to commit in the first instance, that statute applying to this conviction, and the warrant was sufficient, as it followed the form given by the Act, which contains no recital of the ground for not first issuing a distress. Quære, whether defendant would have been liable if he had not proved, as he did, the facts which justified him in dispensing with distress. MOFFATT v. BARNARD, 24 U. C. R. 498.

The warrant committed the plaintiff also for the charges of conveying him to gaol, but omitted to state the amount : —Held, following Dickson v. Crabb, 24 U. C. R. 494, that this would not make defendant a trespasser. IB.

7. **Commitment After Part Payment.**]—Where in trespass for false imprisonment, defendant justified under a warrant from the president and board of police at Cobourg, under the Cobourg Police Act, for the non-performance of statute labour by the plaintiff, the justification was held bad because the plaintiff was imprisoned after part of the fine had been paid; and the warrant to imprison being for an absolute time, without any reference to the earlier payment of fine and costs, was illegal and void. TRIGERSON v. BOARD OF POLICE OF COBOURG, 6 O. S. 405.

8. **Commitment for Part of Sum Adjudged.**]—A commitment for part of the sum adjudged by the conviction to be paid is not authorized by the Summary Convictions 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, &c. :—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, reversing 17 O. R. 706, that the commitment was bad. Trigerson v. Board of Police of Cobourg, 6 O. S. 405, approved and followed. SINDEN v. BROWN, 17 A. R. 173.

9. **Contempt** — Power to Exclude from Court Room — Privileges of Counsel — Review by Court of Justice's Proceedings.]—A barrister and solicitor while acting as counsel for certain persons charged with a misdemeanour before a justice of the peace holding court under the Summary Convictions Act, was arrested by a constable by the order of the justice, without any formal adjudication or warrant, excluded from the court room, and imprisoned for an alleged contempt and for disorderly conduct in court. In an action by the counsel against the justice and the constable for assault and false arrest and imprisonment :—Held, that the justice had no power summarily to punish for contempt in facie curiae, at any rate without a formal adjudication and a warrant setting out the contempt. Armour v. Boswell, 6 O. S. 153, 352, 450, followed. 2. That he had the power to remove persons who, by disorderly conduct obstructed or interfered with the business of the court; but, upon the evidence, that the plaintiff was not guilty of such conduct, and had not exceeded his privilege as counsel for the accused, and the proper exercise of such privilege could not constitute an interruption of the proceedings so as to warrant his extrusion. If the justice had issued his warrant for the commitment of the plaintiff and had stated in it sufficient grounds for his commitment, the court could not have reviewed the facts alleged therein; but, there being no warrant, the justice was bound to establish such facts upon the trial as would justify his course. Young v. Saylor, 23 O. R. 513, 20 A. R.645. See Sub-Title II. 3 ante.

10. **Conviction Illegal on its Face.**]—A magistrate, justifying under a conviction and warrant, must prove a conviction not illegal on its face, and a warrant of distress supported by it, and not on the face of it, illegal :—Held, therefore, that a conviction "for wilfully damaging, spoiling, and carrying away six bushels of apples of the said R's.," did not support a warrant which recited "that whereas judgment was given against E., of, &c., in a suit, R. v. E., for a misdemeanour, in taking apples by force and violence off and from the premises of the said R., etc.; these are therefore to authorize, &c."; and also, that neither the conviction nor the warrant stated an offence for which such a conviction could take place. Eastman v. Reid, 6 U. C. R. 611.

Conviction — Necessity to Quash.]—Held, that s. 4 of R. S. O. 1877, c. 73, as amended by 41 Vict. c. 8 (O.) prevents an action being brought for anything done under a conviction whether there was jurisdiction to make the conviction or not, so long as the conviction remains unquashed and in force. Arscott v. Lilley, 11 O. R. 285, 14 A. R. 283.

11. **Costs** — False Imprisonment.]—Where in an investigation of a charge under the Petty Trespass Act, 4 Wm. IV. c. 4, before magistrates, the plaintiff was guilty of a contempt, for which the magistrates convicted him, but without warrant, and the plaintiff brought an action for false imprisonment against them 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 the Judge, under s. 21 of that Act, to certify his approval of the verdict to entitle the plaintiff to his costs. Armour v. Boswell, 6 O. S. 450.

12. **Costs.**]—Held, that the facts of this case were such as to entitle defendant to the protection afforded by 4 & 5 Vict. c. 26; and that the privileges extended by that statute to justices, as regards exemption from costs, is not cancelled by the latter Act, 14 & 15 Vict. c. 54. Keely v. Raile, Finlay v. Raile, 9 U. C. R. 666.

13. **Costs.**]—Two actions were brought against a justice for trespass and false imprisonment. On the 30th of August, 1851, a verdict for the plaintiff was found in one case of £2. 10s., and in the other of 1s. :—Held, that 14 & 15 Vict. c. 54, applied; and that the plaintiff was entitled to his full costs in both suits. Keely v. Raile, Finlay v. Raile, 2 C. L., Ch. 155.

14. **Costs.**]—Where a plaintiff was restricted to the recovery of only three cents damages, he was held not to be entitled to any costs :—Held, also, that ss. 18 & 19 of C. S. U. C. c. 126, taken to gether, must be limited "to any such action" not provided for in s. 17 of the same Act :—Held, also, that no one can have costs taxed to him who did not incur costs. Haacke v. Adamson, 10 L. J. 270.

15. **Costs.**]—The provisions of R. S. O. 1877, c. 73, s. 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 jusitfy what has been done under it. The plaintiff being in custody on a warrant issued by the defendant L. on a conviction had before him under the Vagrant Act, applied to be discharged under the Habeas Corpus Act, the plaintiff electing to remain in custody at London, instead of 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 county Crown Attorney, detained her for two hours after the 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 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, the dismissal of the action was affirmed, but held, reversing 11 O. R. 285, that s. 19, R. S. O. 1877 c. 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. ARSCOTT V. LILLEY, 14 A. R. 283.

16. **Costs.**]—In an action against justices of the peace for false imprisonment &c., the divisional court (10 O. R. 631,) ordered judgment to be entered for the plaintiff for $25, the damages assessed by the jury, leaving the costs to be taxed according to such scale and with such rights as to set-off as the statute and rules of court might direct. Upon appeal from taxation :—Held, that the action being within the proper competence of the division court (unless the defendant object ed thereto), the plaintiff should have costs only on the scale applicable to that court, and the defendants should have their proper costs by way of deduction or set-off :—Held, also, that the effect of R. S. O. 1877 c. 73, s. 19, read in connection with s. 12 of that Act, and with R. S. O. 1877 c. 43, s. 18, s.-s. 5, R. S. O. 1877 c. 47, s. 53, s.-s. 7, and R. S. O. 1877 c. 50, s. 347, is not to provide that the plaintiff should have costs on the superior court scale when his recovery is within the jurisdiction of an inferior court. IRELAND V. PITCHER, 11 P. R. 403.

17. **Costs.**]—The defendant served upon the convicting magistrates notice of motion by way of appeal from an order of a Judge in chambers refusing a certiorari to remove a conviction under the Liquor License Act, returnable before a divisional court in Michaelmas sittings, but did not set the motion down for hearing before the sittings, or take any step after serving the notice of motion to bring it to a hearing during the sittings. The court ordered the defendant to pay to the magistrates their costs of appearing to shew cause against the motion. REGINA V. ARMSTRONG, 13 P. R. 306.

18. **Costs** — SECURITY FOR.]—Where a person who holds a public office is made defendant in an action the pleadings must be looked at to determine whether he is sued in his capacity of a public officer, and so entitled to security for costs under s. 7 of the Law Courts Act, 1896; and if the pleadings are of such a character that the case cannot on them go to the jury against the defendant as a public officer, he cannot claim the protection of the statute, even where he shews by affidavits that his sole connection with the matter alleged against him was in his public capacity. PARKES V. BAKER, 17 P. R. 345.

19. **Costs** — SECURITY FOR.]—Upon applications under 53 Vict. c. 23 (O.), for security for costs in actions against justices of the peace the rule should not be more, but rather less, onerous than in ordinary applications for security where the plaintiff is out of the country. Section 2 of the Act provides that it is to be shewn that the plaintiff is not possessed of property sufficient to answer the costs of the action :—Held, that the court should be less exacting as to the character of the property, where the person is a bone fide resident than in the ordinary case of a stranger who seeks to justify upon property within the jurisdiction; the test is : is it such property as would be forthcoming and available in execution?

And where the plaintiff had property, partly real and partly personal, to the value of $800 over and above debts, incumbrances, and exemptions, security for costs was not ordered. BREADY v. ROBERTSON, 14 P. R. 7.

20. **Costs** — SECURITY FOR.]—An order under 53 Vict. c. 23 (O.) for security for costs in actions against a justice of the peace should not limit a time within which security is to be given nor provide for dismissal of the action in default; the order should be simply "that the plaintiff do give security for the costs of the defendant to be incurred in the action". THOMPSON v. WILLIAMSON, 16 P. R. 368.

21. **Costs** — SECURITY FOR.]—In an action against a justice of the peace for false arrest and imprisonment, it appeared that there was a valid warrant of commitment against the plaintiff in the county of O., which was, in the absence of a police magistrate, indorsed by the defendant for execution in the city of T. and under which the plaintiff was there arrested. The plaintiff alleged that the arrest was illegal because the defendant's mandate was not actually indorsed upon the warrant, and because the defendant's authority was not shewn on the face of his mandate. It appeared, however, that the defendant's mandate was pasted or annexed to the warrant, and that the defendant in fact had authority though it was not set out. It was admitted that the plaintiff was not possessed of property sufficient to answer costs :—Held, that the defendant was entitled to security for costs under 53 Vict. c. 23 (O.). SOUTHWICK v. HARE, 15 P. R. 222.

22. **Costs** — SECURITY FOR.]—An order under rule 1244 for security for costs in an action for a penalty may properly contain provisions limiting the time for giving security and for dismissal of the action, without further order, upon default; and such an order, not appealed against, is conclusive to all the parties as to all its terms. Thompson v. Williamson, 16 P. R. 368, distinguished. The action was brought against justices of the peace, to recover a penalty for non-return of a conviction of the plaintiff, the error of the defendants being merely clerical, and one not prejudicing the plaintiff :—Held, not a case in which the indulgence of extending the time for giving security should be granted to the plaintiff. ASHCROFT v. TYSON, 17 P. R. 42.

23. **Criminal Information** — NOTICE OF.]—A magistrate is entitled to six days' notice of a motion of a criminal information against him for a violation of his duty. The motion must be made in sufficient time to enable the party accused to answer the same term. REGINA v. HUESTIS, James, N. S. R. 101.

24. **Damages.**]—Held, that upon the evidence given in this case a jury might assess several damages on each of the three counts, the two first being for assault and imprisonment on different days, and the third for malicious prosecution. APPLETON v. LEPPER, 20 C. P. 138.

25. **Damages.**]—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, 15 C. P. 584.

26. **Damages.**]—The plaintiff produced a warrant issued for his arrest for not finding sureties to the peace in pursuance of an order to that effect recited in the warrant :—Held, that such warrant was prima facie evidence of the order. SPRUNG v. ANDERSON, 23 C. P. 152.

27. **Damages.**]—Trespass against a magistrate for seizing and selling plaintiff's goods. At the trial evidence was given to shew that the plaintiff had been guilty of the offence, but such evidence was offered and received only in mitigation of damages. The provisions of 16 Vict. c. 180, s. 12, which in such a case limit the damages to twopence, and deprive the plaintiff of costs, were overlooked, and the plaintiff obtained a verdict for full damages :—Held, that there must be a new trial without costs. Held, also, that the section is not confined to actions in which the justices had jurisdiction. BROSS v. HUBER, 15 U. C. R. 625.

28. **Damages.**]—Action against a magistrate for wrongful arrest and imprisonment, upon a conviction for selling liquors

without a license. The first count was in trespass, the second in case. At the trial the offence of which the plaintiff was convicted, was fully proved :—Held, that on either count the damages must be reduced to three cents, under C. S. U. C. c. 126, s. 17, as plaintiff was proved "guilty of the offence of which he was convicted," and this applies as well to trespass as to case. HAACKE V. ADAMSON, 14 C. P. 201.

29. **Damages.**]—In an action against two justices for one act of imprisonment, charged in one count as a trespass, and in another as done maliciously, the jury found $800 against one defendant, and $400 against the other :—Semble, that the damages could not be thus severed :— Held, no ground for a new trial, as the finding might be treated as a verdict for $800 against one defendant, the other being let go free by plaintiff. Quære as to the proper mode of entering judgment. One of the defendants having used insulting expressions to the plaintiff during the examination :—Held, no misdirection to tell the jury that they were at liberty to give exemplary or vindictive damages; and that the verdict was not excessive. CLISSOLD V. MACHELL, 25 U. C. R. 80; S. C. in appeal, 26 U. C. R.422.

30. **Defective Conviction** — PRIOR ACTS. —Where a justice of the peace has jurisdiction to try a complaint, and there has been a regular information, but the conviction and warrant of commitment are defective, he is not liable in trespass for anything done prior to the conviction. SEWELL V. OLIVE, 4 All., N. B. R. 394.

31. **Defective Conviction** — PRIOR ACTS] —Where a justice of the peace has jurisdiction to try a complaint, and there has been a regular information, but the conviction and warrant of commitment are defective, he is not liable in trespass for anything done prior to the conviction. See SEWELL V. OLIVE, 4 All., N. B. 394.

32. **Defective Information.**]—Defendant as a justice, issued a warrant against the plaintiff, upon a complaint for detaining the clothes of one K. The plaintiff, on being told by the constable that he had the warrant, went alone to defendant, heard the evidence, was allowed to go away without giving bail, and returned the next day, when he was discharged :—Held, that no imprisonment was proved; and that the defendant, having jurisdiction over the subject matter of the complaint, was not liable to trespass, even if the information were insufficient in point of form. THORPE V. OLIVER, 20 U. C. R. 264.

33. **Detention Pending Adjournment.**]— The plaintiff was brought before the defendant and another, a magistrate, on the 2nd January, 1875, under a summons issued by defendant, on an information that he did, on, &c., "obtain by false pretences from complainant the sum of five dollars contrary to law," omitting the words "with intent to defraud," which by the statute is made part of the offence—32 & 33 Vict. c. i. s. 93, (D.). The prosecutor and another witness T., were examined, and their statements shewed that the plaintiff sold some wo d to the prosecutor on a certain lot, telling him that some other persons had drawn it out, but that it was his, and if there was any trouble about it he would stand between the prosecutor and all danger; that the prosecutor paid him $5 on account, and was afterwards prevented from drawing away the wood by one W., to whom T. swore it belonged; and that the plaintiff had offered to return the $5 which the prosecutor refused because the plaintiff would allow nothing for the use of his team. W. was absent, and the prosecutor asked for an adjournment, which was granted until the 5th. Defendant offered to take bail for plaintiff's appearance then, but the plaintiff refused to give it, saying. "Send me to goal." and defendant ordered the constable to take him into custody. The constable thereupon put him in the lockup, which was not a proper place for the purpose, being very cold and uncomfortable, where he remained until the 5th. This constable, who acted as keeper of the lock-up, said that defendant knew that prisoners remanded were confined there. On the 5th W. appeared and was examined as a witness. The case was adjourned until the 7th, the plaintiff giving bail for his appearance then; and on that day the magistrate, having in the meantime consulted the County Attorney, dismissed the charge. The plaintiff having sued defendant for malicious arrest and for false imprisonment :—Held, that there was no cause of action on either ground, and a non-suit was ordered; for 1. The

defendant had jurisdiction, for the information might by intendment be read as charging the statutable offence; and if not, the plaintiff should have taken the objection before the magistrate, when the information might have been amended and re-sworn; and he was precluded from raising it in this action. 2. There was, upon the evidence, no want of reasonable and probable cause for what defendant had done; for though what the prosecutor complained of was a breach of contract and the subject of an action, it might also support a criminal charge, and the remand under the circumstances was authorized; and that there was no proof of malice :—Held, also, that the defendant could not be held liable for the plaintiff's sufferings, caused by the condition of the lock-up, for he had remanded him only, giving no express directions to put him there. CRAWFORD V. BEATTIE, 39 U. C. R. 13.

34. **Disallowed Legislation.**]—Where an Act passed by the Provincial Legislature, was subsequently disallowed, but while in force the plaintiff had been convicted under it by defendants, and a warrant was properly issued by defendants for his arrest and imprisonment, which, however, was not executed until after the disallowance of the Act was published in the Gazette :—Held, that as the conviction and warrant were legal, the defendants could not be considered as trespassers. CLAPP V. LAWRASON, 6 O. S. 319.

35. **Excessive Penalty.**]—The warrant of commitment directed the plaintiff to be kept at hard labour, which the Temperance Act, under which the conviction took place, does not authorize. The turnkey swore that the plaintiff "did no hard work in gaol" :—Held, not sufficient to negative that he was put to some compulsory work, so as to bring defendant within s. 17 of C. S. U. C. c. 126, which requires it to be proved that defendant had undergone no greater punishment than that assigned by law to the offence of which he was convicted. GRAHAM V. MCARTHUR, 25 U. C. R. 478.

36. **Failure to Return Conviction.**]—The law as to the return of convictions is unchanged since 4 & 5 Vict. c. 12, and a conviction made by an alderman in a city must therefore still be returned to the next ensuing general quarter sessions for the county, and not to the recorder's court for such city. KEENAHAN Q. T. V. EGLESON, 22 U. C. R. 626.

37. **Failure to Return Conviction.**]—Held, in an action for not returning the conviction, no objection in arrest of judgment that the declaration shewed no law under which defendant could convict for the offence mentioned or that it charged him with not making a return of the conviction and of the receipt and application of the moneys received under it, when if he had not received the money he would have only to return the conviction. IB.

38. **Failure to Return Conviction.**]—This action was similar to a former case and was tried on the same day, being brought against M., one of the justices, who was the principal witness for the defence in the former case. The defendant offered as evidence the record of that action with the verdict indorsed thereon, the object being to shew the return of the conviction by himself, and so indirectly to make him a witness in his own behalf : —Held, that the penalty not being a joint one but several, each justice being individually liable, such evidence was immaterial :—Held, also, that the transmission of the conviction itself is not sufficient, without a return thereof. MCLENNAN Q. T. V. MCINTYRE, 12 C. P. 546.

39. **Failure to Return Conviction.**]—C. S. U. C. c. 124, requires justices, under a penalty, to return convictions made by them to the next ensuing general quarter sessions 29 & 30 Vict. c. 50 provides that it shall not be necessary to make such return until the quarter sessions to which the party complaining can appeal. 32 Vict. c. 6 (the Law Reform Act of 1868) enacts that the sessions shall be held only twice a year, and that such returns shall be made to the clerk of the peace, quarterly, on or before the second Tuesday in March, June, September, and December, in each year, and shall embrace all convictions not embraced in some previous return. This Act came into force on the 1st February, 1869, and makes no mention of 29 & 30 Vict. c. 50. The plaintiff in his declaration charged defendant with not returning convictions made in December, 1868, and January, 1869, to the clerk of the peace before the second Tuesday in March following :—Held, insufficient, for when the convictions

were made it was defendant's duty to return them to the quarter sessions, which for all that appeared he might have done; and it should have been averred that he did not so return them before the 1st February, 1869, or after that day to the clerk of the peace. Quære, as to the effect of the last Act upon 29 & 30 Vict. c. 50. OLLARD Q. T. v. OWENS, 29 U. C. R. 515.

40. **Failure to Return Conviction.**]—A conviction of two or more justices being appealed from did not relieve them from making an immediate return under 4 & 5 Vict. c. 12. MURPHY Q. T. v. HARVEY, 9 C. P. 528.

41. **Failure to Return Conviction.**]—An order for the payment of money under the Master and Servant Act, is not a conviction which it is necessary to return to the sessions. RAMNEY Q. T. v. JONES, 21 U. C. R. 270.

42. **Failure to Return Conviction.**]—A conviction was had before defendant and M., another justice, on the 21st September, 1861. M. proved a return, with the conviction itself, made by him for himself, and on behalf of defendant, on the 6th December, 1861, and signed by him in defendant's name, as well as for himself, the defendant having authorized and requested him to sign it. The Judge left it to the jury whether the return was "immediate," as required by the statute, telling them that the word should be construed to mean within a reasonable time; and they found for the defendant:—Held, 1. That the fact was properly left to the jury, and their decision upon a matter of fact in a penal action was final. 2. That although the statute requires the return to be made by the convicting justices under their hands, yet it was sufficient. Quære, whether the return came within the term "immediate" under the statute. McLELLAN Q. T. v. BROWN, 12 C. P. 542.

43. **Failure to Return Conviction.**]—Defendant committed and fined the plaintiff for carrying away some cordwood. After notice of appeal the prosecutor, finding that the conviction was improper, went to the defendant, who drew for him a notice of discontinuance, which was served on the person acting as attorney for the plaintiff, before the meeting of the next quarter sessions. The defendant sent a general return to that court, including this and another conviction, but ran his pen through the entry of the conviction leaving the writing, however, quite legible, and wrote at the end of it, "This case withdrawn by the plaintiff":—Held, a sufficient return, within 4 & 5 Vict. c. 12. BALL Q. T. v. FRASER, 18 U. C. R. 100.

44. **Failure to Return Conviction.**]—Where to acquit an action, for not returning a conviction, defendant pleading another action for the same cause, it is sufficient to prevent that suit from being a bar to shew that it was not brought to recover the penalty, but to prevent defendant from being obliged to pay it to others; and it is not essential to shew collusion between the defendant and the plaintiff in such action:—Held, the court being left to draw inferences as a jury, that the evidence in this case supported a replication that the first action was commenced by fraud and covin. KELLY Q. T. v. COWAN, 18 U. C. R. 104.

45. **Failure to Return Conviction.**]—Quære, whether 4 Hen. VII. c. 20 applies except when judgment has been recovered in the suit pleaded. The fact of defendant having appealed, and the fine thereof not having been collected, forms no excuse for not returning the conviction; but, semble, that if under such circumstances the justice returns the conviction only, without the return prescribed by the Act, he will not be liable. IB.

46. **Failure to Return Conviction.**]—Held, that justices of the peace must now return all convictions made by them to the clerk of the peace, on or before the second Tuesday in March, June, September, and December, respectively, following the date of conviction. The several statutes on the subject referred to. CORSANT Q. T. v. TAYLOR, 23 C. P. 607.

47. **Failure to Return Conviction.**]—Held, that the neglect of a justice of the peace to return convictions made by him as prescribed, renders him liable under 32 & 33 Vict. c. 31 (D.), as well as under C. S. U. C. c. 124, to a separate penalty for each conviction not returned, and not merely to one penalty for not making a general return of such convictions. The various statutes on the subject reviewed. DARRAGH Q. T. v. PATERSON, 25 C. P. 529.

48. **Failure to Return Conviction.**]— The effect of R. S. O. 1877 c. 76, s. 1, is to require justices of the peace, where more than one take part in a conviction, to make an immediate return thereof to the clerk of the peace. Where, therefore, to a declaration alleging a conviction by the defendants, two justices of the peace, and their failure to make an immediate return thereof as required, the defendants pleaded that before action they duly made the return of the said conviction, required by law to be made by them :— Held, that the plea was bad, for that the return therein set up was not a compliance with the statute. ATWOOD Q. T. v. ROSSER, 30 C. P. 628.

49. **Failure to Return Conviction.**]— In an action against two justices of the peace to recover a penalty for not making an immediate return of a conviction under R. S. O. 1877 c. 76 :—Held, that it is a question for the jury whether, under the circumstances of any particular case, the return made is immediate, and that in a qui tam action the jury's finding for the defendant should not be disturbed. In this case the conviction was made on the 31st August, and the magistrates withheld the return until the 15th September, expecting to receive a fine every day, and intending to return it with the conviction. The jury having been directed to find whether this was not "reasonably immediate" returned a verdict for the defendants, which was upheld. LONGEWAY v. Q. T. AVISON, 8 O. R. 357.

50. **Failure to Return Conviction.**]— A police magistrate, acting ex-officio as justice of the peace, is not subject to the provisions of s. 1 of R. S. O. 1887 c. 76, and need not make a return as therein required to the clerk of the peace. Section 6 of R. S. O. 1887 c. 77, exempts him from this duty whether he is acting as police magistrate or ex-officio as justice of the peace. HUNT v. SHAVER, 22 A. R. 202.

51. **Failure to Return Conviction.**]— Held, no objection to the declaration that the plaintiff sued for the receiver-general and not for Her Majesty, in as much as suing for a penalty for the receiver general, for the public uses of the Province, is in fact suing for the Queen. Besides, C. S. U. C. c. 124 authorizes party to sue qui tam for the receiver-general. Held, also, that the defendant having actually convicted and imposed a fine, could not object that the declaration did not shew that he had jurisdiction to convict. BAGLEY Q. T. v. CURTIS, 15 C. P. 366.

52. **Failure to Return Conviction.**]— A plaintiff suing a justice under C. S. U. C. c. 124, s. 2, for the penalty of $80 for not returning a conviction, is entitled to full costs without a certificate. STINSON Q. T. v. GUESS, 1 C. L. J. 19. See BRUSH Q. T. v. TAGGART, 16 C. P. 415.

53. **Failure to Return Conviction.**]— Held, that a penal action for not returning a conviction, is founded on tort, and for that reason cannot be brought in a division court. CORSANT Q. T. v. TAYLOR, 10 C. L. J. 320.

54. **Failure to Return Conviction.**]— Returns of convictions and fines for criminal offences being governed by 32 & 33 Vict. c. 31, s. 76 (D.), and not by the Law Reform Act of 1868, are only required to be made semi-annually to the general sessions of the peace. CLEMENS Q. T. v. BEMER, 7 C. L. J. 126.

55. **Failure to Return Conviction.**]— Declaration, that defendant and W. C., then being two justices of the peace for, &c., on the 30th December, 1872, convicted the plaintiff and J. and D. of an offence of which they stood charged by E. C., and adjudged each of them for the said offence to pay $1, to be paid and applied according to law, and costs; and thereupon it became the duty of defendant and W. C. as such justices, to make a joint return in writing of the said conviction, to the clerk of the peace for, &c., on or before the 2nd Tuesday in March, 1873, according to the form of the statute in such case made and provided, yet they did not, nor did either of them, as by the said statute in that behalf required, make any return of the said conviction to the said clerk of the peace on, etc., "contrary to the said statute," whereby and "by force of the statute in that behalf" the defendant forfeited $80, and an action has accrued to the plaintiff, who sues for the same "under the said statute," to demand and have from the defendant the sum of $80 :—Held, on demurrer, declaration bad; for it should have alleged defendant's neglect to have been contrary to the statutes, not merely

the statute, there being two statutes upon the subject, each requiring a different return. Held, also, that the plaintiff might sue for himself alone, and need not sue qui tam. Held, also, that an action would lie against each magistrate for the penalty, for though in form in debt, the action was in fact ex delicto. Quære, there being now some offences under the jurisdiction of the Dominion and some under that of Ontario, and a different return required and a different penalty imposed, as regards each class, whether the declaration should not state the nature of the offence, and that it was within the magistrate's jurisdiction, though formerly this was not requisite. DRAKE Q. T. v. PRESTON, 34 U. C. R. 257.

56. **Failure to Return Conviction.**]—Declaration, that on, &c., an information on oath was laid before M., J. P., against T. J., for having within six months sold spirituous liquors to persons therein named, contrary to the statutes: that said M. summoned the said J., who appeared before the said M., defendant, and other named justices, and that said justices, having jurisdiction in the premises, convicted him of said offence, whereupon it became their duty to return such conviction to the then next ensuing general quarter sessions of the peace in and for, &c., yet defendant did not make such return:—Held, that proof of an offence against a by-law of the municipality, and a conviction under such by-law, were not sufficient proof of the declaration. SPILLANE v. WILTON, 4 C. P. 236.

57. **Failure to Return Conviction.**]—Justices before whom a conviction is made, are not jointly liable, under 4 & 5 Vict. c. 12, for not returning the same. A declaration charging that the return was not made to the next ensuing quarter sessions, is bad; the statute requiring a return to the next ensuing general quarter sessions. METCALF Q. T. v. REEVE, 9 U. C. R. 263.

58. **Failure to Return Conviction.**]—Held, that a justice is liable, under the statute, to a separate penalty of 20 pounds sterling for each conviction of which a return is not properly made to the quarter sessions; and that an action for the penalty would lie, on proof of the conviction and fine imposed, although no record thereof had been made by the justice. DONOGH Q. T. v. LONGWORTH, 8 C. P. 437.

59. **Failure to Return Conviction.**]—The defendants with two other justices, convicted one D. S. of having refused to serve as returning officer at an election, and fined him $20. It was afterwards discovered that this was not the first election for the ward, and therefore that the conviction was illegal. The conviction was not returned to the next quarter sessions; and thereupon, though after the return made, this action was brought for the penalty awarded by 4 & 5 Vict. c. 12:—Held, on motion for a non-suit, that the illegality of the conviction was no defence; but that if on that account the fine had not been levied, a return should have been made explaining the circumstances. Quære, whether the declaration would have been bad on motion in arrest of judgment for charging the offence to be that the defendant did not make return to the next ensuing court of general quarter sessions, instead of an immediate return as the statute requires. Quære, also, whether the court, if promptly applied to, would have stayed the proceedings the action being brought after the defendant had returned the conviction. O'REILLY Q. T. v. ALLAN, 11 U. C. R. 411.

60. **False Arrest** — LIABILITY THEREFOR.]—The judicial character of the act of a magistrate in issuing a capias, regular in form, but based on an affidavit impeached as insufficient under R. S. 5th Series, c. 102, s. 5, will protect all who have acted under it in securing the arrest—even one who after issue, has interfered to describe and point out the person to be arrested. It is not so if the capias be irregular in form, and not merely voidable but void. ORWITZ v. MCKAY, 31 N. S. R. 243.

61. **False Arrest.** — NOTICE — R. S. c. 101, s. 19.]—An action against a magistrate for a false arrest, was dismissed for want of notice given, as required by R. S. 5th Series, c. 101, s. 19. On appeal the court was equally divided as to the necessity for notice:—Held, per Henry, J., (Graham, E. J., concurring), dismissing appeal, that a magistrate is entitled to notice of action under the section, wherever he has acted in good faith, and not merely colorably in the execution of his office, no matter how great the error of law into which he may have fallen. Per Ritchie, J., (McDonald, C. J., concurring), that

though such was the sense of the older cases, now, if a magistrate acts entirely without jurisdiction, he is not entitled to notice. Semble, also, the fact that he was misled by a barrister is not a mitigation of his error. MOTT v. MILNE, 31 N. S. R. 372.

62. **Falsity of Charge.**]—The falsity of a charge cannot give a cause of action against a magistrate who acts upon the assumption and belief of its truth; and an allegation that he acted without any just cause upon a false charge but not charging malice, means only that the charge being false he had no just cause. SPRUNG v. ANDERSON, 23 C. P. 152.

63. **False Imprisonment** — FINE AND IMPRISONMENT IN ALTERNATIVE.]—Plaintiff was charged before the stipendiary magistrate for the city of Halifax with lewd conduct and keeping a room or house of prostitution, and was fined $5, and, in the event of non-payment, ordered to be imprisoned two months. There was evidence that the magistrate ordered him into custody, where he remained until the fine was paid, but this was not put to the jury:—Held, per McDonald C. J., and McDonald, J., that the magistrate was not liable to an action for false imprisonment. Per Rigby and Smith, JJ., that the conviction in the alternative as bad, and the imprisonment thereunder unlawful. MARTER v. PRYOR, 4 R. & G., N. S. R. 498.

64. **False Imprisonment** — COMMITTING CLERK OF PEACE FOR REFUSING TO PRODUCE RECORDS.]—A clerk of the peace is not bound to produce the records of the sessions in his possession as such clerk, in compliance with a subpoena duces tecum, and where a clerk of the peace was imprisoned for refusing to produce such records when so required, it was held, that the justice was liable to an action for false imprisonment. It was proper for the plaintiff, on the trial of the action, to show that while he was imprisoned, he had been requested to perform certain judicial duties as Judge of Probates, and had been prevented from complying with such request by reason of his imprisonment. WETMORE v. HARDING, 2 P. & B. N. B. R. 338.

65. **False Imprisonment** — EVIDENCE — INNOCENCE OF PLAINTIFF.]—By C. S. N. B. c. 90, s. 11, it is enacted that, "where the plaintiff shall be entitled to recover in any action against a justice, he shall not have a verdict for any damages beyond two cents or any costs of suit, if it shall be proved that he was guilty of the offence of which he was convicted," etc. In an action for false imprisonment brought against a magistrate, who without jurisdiction had committed to prison the plaintiff for making default in payment of a fine imposed upon him for selling liquor without a license, evidence was offered and admitted in proof of the plaintiff's innocence of the charge:—Held, that the evidence was properly received, and that the plaintiff, in order to prove his innocence, was not confined to such evidence as had been given before the magistrate on the trial of the information. LABELLE v. MCMILLAN, 34 N. B. R. 488.

66. **General Charge.**]—When magistrates commit a person upon a general charge of felony given upon oath, they will not be liable to an action of trespass, although the facts sworn to in order to substantiate that charge may not in point of law support it. GARDNER v. BURWELL, Tay. O. R. 189.

67. **Habeas Corpus Act** — SECOND WARRANT.]—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 of 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 s. 6 of the Habeas Corpus Act, 31 Car. II. c. 2:—Held, that s. 6 of the Habeas Corpus Act, 31 Car. II. c. 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. ARSCOTT v. LILLEY, 11 O. R. 153, 14 A. R. 297.

68. **Illegal Arrest** — WARRANT OF COMMITMENT — MINISTERIAL ACT — EXCESSIVE PUNISHMENT.]—The defendant, a stipendiary magistrate, made a conviction against the plaintiff under the Canada Temperance Act, which was admittedly good. When he issued the warrant, he departed from the conviction and directed imprisonment with hard labour. The plaintiff was discharged on habeas corpus proceedings, and brought this action for damages for illegal arrest: —Held, that the magistrate was liable. If the issue of the warrant were a judicial act, the plaintiff would fail, as no malice was proved. The issuing of the warrant was, however, a ministerial act. Banister v. Wakeman, 15 L. R. A. 201, Briggs v. Wardell, 10 Mass. 356, Noxon v. Hill, 2 Allen 215, referred to. The case was distinguishable from Mott v. Milne, 31 N. S. R. 372, because the latter case proceeded on the assumption that the issuing of a warrant to arrest for an indictable offence by a magistrate upon an information had before him was a judicial act. The defendant was not entitled to the protection of R. S. N. S. 1900 c. 40, s. 16, because the plaintiff was undergoing a greater punishment than the law assigned for the offence. MCIVER v. MCGILLIVRAY, 24 Occ. N. 142, 237.

69. **Imprisonment Without Option of Payment.**]—Under the Summary Punishment Act magistrates cannot issue their warrant to imprison absolutely for so many days, but only to imprison for so many days unless the fine and costs be sooner paid. FERGUSON v. ADAMS, 5 U. C. R. 194.

70. **Indorsement of Warrant.**] — The warrant was issued in the united counties of Northumberland and Durham, and was indorsed by a magistrate in the county of Peterborough, "This is to certify that I have indorsed 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 & 33 Vict. c. 30, s. 23, (D.), sch. K:—Held, that the warrant was defective, and the arrest illegal, for which the defendant was liable in trespass. REID v. MAYBEE, 31 C. P. 384.

71. **Jurisdiction Over the Individual the Test.**]—The plaintiff was arrested upon a warrant issued by defendant, a magistrate, and brought before him. Defendant examined the plaintiff, but took no evidence, said he could not bail, and committed the plaintiff to gaol, on a warrant reciting that he was charged before him to give evidence:—Held, that defendant was liable in trespass; for assuming that the plaintiff was properly brought before him, yet the commitment without appearance of the prosecutor, or examination of any witness, or of the plaintiff according to the statute, or any legal confession, was an act either wholly without or in excess of jurisdiction, and therefore within the second clause of C. S. U. C. c. 126. That section is to be confined to cases in which the act by which the plaintiff is injured is an act in excess of jurisdiction; but the magistrate's protection depends not on jurisdiction over the subject matter, but over the individual arrested. CONNORS v. DARLING, 23 U. C. R. 541.

72. **Magistrate Acting Outside His Territory.**]—In an action for causing the defendant to be charged before a magistrate with misdemeanour, on which the magistrate issued his warrant and plaintiff was arrested, it appeared that the offence was alleged to have been committed by the plaintiff in the county of Middlesex, but the charge was made and the warrant issued in the city of London, by a justice of the peace for the county only, not for the city:—Held, that as the magistrate, acting out of his jurisdiction, had no authority whatever, the action was misconceived; that it was as if defendant had himself directed the arrest; and that trespass, therefore, not case, was the proper remedy. HUNT v. MCARTHUR, 24 U. C. R. 254.

73. **Magistrate Convicting After Warning.**]—A magistrate having entertained a case under the Master and Servant Act, C. S. U. C. c. 75, as amended by 29 Vict. c. 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. R. 130.

74. **Magistrate Convicting Complainant for Not Testifying.**]—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, then and there to testify, &c., but she said she did not wish to go on; and on the same day she was arrested under a warrant issued by 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 s. 16 of 32 & 33 Vict. c. 31, or the warrant under s. 17. CROSS v. WILCOX, 39 U. C. R. 187.

75. **Magistrate Directing Sale of Stolen Cattle.**]—Cattle supposed to have been stolen are taken by A., a constable, to B., an inn-keeper, to take care of. After some time B., wishing to be paid for the keep, applies to C., a magistrate, who had nothing to do with the original caption, for directions. C. tells him to sell the cattle and satisfy his claim, which B. does. The owner of the cattle sues C. in trespass :—Held, that trover, and not trespass, should have been the action. Semble, that under the circumstances B., the inn-keeper, would not be liable to the owner in trespass. MARSH v. BOULTON, 4 U. C. R. 354.

76. **Malicious Prosecution.**]—The defendant laid an information charging that the plaintiff "came to my house and sold me a promissory note for the amount of ninety dollars, purporting to be made by J. M. in favour of T. A., and I find out the said note to be a forgery." Upon this a warrant was issued reciting the offence in the same words, and the plaintiff was under it apprehended and brought before the justice of the peace who issued it, and by him committed for trial by a warrant reciting the offence in like terms. The plaintiff was tried for forging and uttering the note, and was acquitted :—Held, that the information sufficiently imported that the plaintiff had uttered the forged note, knowing it to be forged, to give the magistrate jurisdiction, and therefore the warrant was not void, and an action of trespass was not maintainable against the defendant even upon evidence of his interference with his arrest. Semble, that if the offence was not sufficiently laid in the information to give the magistrate jurisdiction, and the warrant were void, an action for malicious prosecution would nevertheless lie. ANDERSON v. WILSON, 25 O. R. 91.

77. **Malicious Prosecution** — KNOWLEDGE ACQUIRED AS JUSTICE OF THE PEACE.]—Action for malicious prosecution. Defendant was a justice of the peace, and as such acquired his knowledge of the circumstances on which he preferred the charge against defendant :—Held, clearly no ground for requiring that express malice should be proved against him. ORR v. SPOONER, 19 U. C. R. 154.

78. **Necessity for Quashing Conviction.**]—The plaintiff having been arrested, convicted, and imprisoned for having liquors for sale near public works, writs of habeas corpus and certiorari were issued and on the return thereof he was discharged. Under a writ of certiorari directed to defendants, the convicting magistrates, the conviction, which was not under seal, was returned by defendant's solicitor to whom all the papers had been delivered by defendants, and who in his affidavit accompanying the return had sworn that the conviction re-

turned was the one made by defendants :—Held, in an action against the magistrates, that not being under seal it was not necessary that the conviction should have been quashed before action brought. Haacke v. Adamson, 14 C. P. 201, and McDonald v. Stuckey, 31 U. C. R. 577, followed. Held, also, that the return being made to a writ of certiorari directed to defendants, and not referring to the certiorari directed the gaoler under the habeas corpus, and in face of the solicitor's affidavit, a properly sealed conviction, which, however was not produced at the trial, could not be received. BOND v. CONMEE, 15 O. R. 716, 16 A. R. 398.

79. **Necessity for Quashing Conviction.**]—The plaintiff, who resided in the county of H., was convicted before defendant G., a police magistrate for the county of B., for giving intoxicating liquor to an Indian and fined, with committal to the county gaol of B. on non-payment of the fine. The fine not having been paid, G. issued a warrant of commitment, directed to all the peace officers of B., to arrest plaintiff, and prepared a form of indorsement to be signed by a justice of the peace of H., authorizing the defendant N., a constable, to arrest plaintiff in H. G. handed the warrant to N. telling him plaintiff lived in H. and he would have to get the warrant indorsed. N. took it to R., a justice of the peace for H., who signed the indorsement, and plaintiff was arrested by N. and taken first before G. in B. to see if he would accept a note in payment, and then to the county gaol of B. The plaintiff was afterwards discharged on habeas corpus, but the conviction was not quashed :—Held, that the action was maintainable against the defendants G. and R.; that there was no power enabling R. to indorse the warrant, and that he was guilty of trespass in so doing; and that G. was liable as a joint trespasser, for by his interference he was responsible not only for the arrest, but for the subsequent detention in the gaol of B.; and that it was not necessary to quash the conviction before action brought, as the arrest in the county of H. was not anything done under a conviction or order within s. 4 of R. S. O. 1887 c. 73. At the trial the jury found that the plaintiff had sustained no damage as against R. and they assessed the damages solely against G. Judgment was thereupon entered as against G., and the action dismissed as to R. :—Held, that the finding of the jury as to the damages, was in law permissible; but had R. been held liable as plaintiff at most could only have had a new trial, or elect to retain his judgment as against G. alone, the court would not interfere with the finding. Quære, whether the constable N. was protected under 24 Geo. II. c. 24. JONES v. Grace 17 O. R. 681.

80. **Oral Order for Arrest.**]—When a magistrate allows a prisoner to depart without examining into the charges against him, with a direction to appear 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 an oral 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, 1 U. C. R. 154.

81. **Overcharge.**]—A magistrate acting under 32 & 33 Vict. c. 20, s. 37 (D), convicted four persons for creating a disturbance 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, more fully set out in the report of the case, 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 R. S. O. 1877 c. 77, s. 4. PARSONS QUI TAM v. CRABBE, 31 C. P. 151.

82. **Paying Over Money.**]—A justice of the peace, to whom money is paid on a judgment recovered before him, is bound to pay it over to the plaintiff in the suit and if he does so, and the judgment is afterwards reversed on appeal, he is not liable to repay the defendant, though he promised to retain the money till the appeal was decided. WILSON v. BOYD, 2 All. N. B. R. 537.

Quære, whether a justice is entitled to a notice of action for money had and received in such a case.

83. **Protection — IRREGULARITY IN PROCEEDINGS.**]—Plaintiff, having been convicted before defendants, two justices of the peace, of selling spirituous liquors without a license, was fined a certain sum

to be levied by distress, and if not paid within a limited time, plaintiff to be imprisoned. At the expiration of the time limited for payment, defendants issued a warrant of commitment, without previous issue of distress warrant :—Held, in an action for false imprisonment, that as plaintiff was guilty of the offence for which she was convicted, and her imprisonment did not exceed that assigned by law to the offence, defendants were entitled to the protection of section 11 of the Rev. Stat. cap. 129, and to have the verdict reduced to twopence. SMITH v. SIMMONS, 2 Pug., N. B. R. 203.

84. **Public Works Act** — EVIDENCE.]—From the village of M., where the arrest and conviction in question took place and the liquors in question were destroyed, to the Canadian Pacific Railway, then in course of construction, over fifty miles distant, the company had constructed a colonization supply road for the conveyance of supplies for the railway. No proclamation had been issued under R. S. O. 1877 c. 32, proclaiming this a public road; but subsequently the Dominion Government, by proclamation, issued under R. S. C. c. 151, proclaimed the ten miles on each side of the supply road to be in the vicinity of a public work :—Held, that the village of M. was not within three miles of a public work under R. S. O. 1877 c. 32. Per Galt, C. J., the place did not come within either Act, no proclamation having been issued at the time. On application to the divisional court for leave to put in evidence the written Order for the destruction of the liquor, which was not produced at the trial. Per Galt, C. J., the magistrate had no power to make the order, the authority to do so being based on R. S. O. 1877 c. 32, which was not made applicable, and therefore the order was not admissible. Per Rose and MacMahon, JJ., the order for the destruction of the liquor was not dependant on the conviction of the plaintiff, and came within R. S. O. 1877 c. 73, and the destruction was an act under an order thereunder, which order must be quashed to avoid the protection afforded by s. 4; but per Rose, J., it should not now be received in evidence. Per MacMahon, J., it should be received, and a new trial granted on this part of the case :—Held, by the court of appeal 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, 15 O. R. 716, 16 A. R. 398.

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 the 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 c. 73, s. 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. Affirmed by the Supreme Court. IB.

85. **Receipt of Money by Justice.**]—Defendant, a justice of the peace, acting without jurisdiction, issued a warrant for the arrest of the female plaintiff; but when the parties were brought before the justice, he recommended them to settle the matter, and she paid an amount to the constable and was discharged :—Held, that the receipt by the justice of part of the amount as his fees, was not such a recognition of the settlement as to render him liable for the sum paid. GIDNEY & WIFE v DIBBLEE, 2 Pug. N. B. R. 388.

86. **Refusal to Admit to Bail.**]—Before 16 Vict. c. 179, magistrates were not liable for refusing to admit to bail on a charge of misdemeanour, without proof of malice. CONROY v. MCKENNY, 11 U. C. R. 439.

87. **Return of Conviction** — SHOULD BE TO COUNTY COURT — ACTION TO RECOVER PENALTY FOR NOT RETURNING — IN WHAT COURT TO BE BROUGHT — NOTICE OF ACTION — ACT 32 & 33 VICT. c. 31, s. 78 — NOT ULTRA VIRES.]—The

78th section of the Statutes of Canada, 32 & 33 Vict. c. 31, which declares that in case the justice of the peace before whom any conviction takes place neglects or refuses to make a return of such conviction, as required by the 76th section of the Act, he shall forfeit and pay the sum of $80, with costs of suit, to be recovered by any person suing for the same by action of debt in any court of record in the province in which such return ought to have been made, is not ultra vires, and such penalty may be recovered in the county court, this section overriding the provision in the Con. Stat. c. 51, c. 7, that the county courts shall not have jurisdiction over actions against justices of the peace. Held, also, that in this province convictions schould be returned to the county court of the county in which they are made. No notice of action is necessary before suing a justice for the recovery of the penalty provided by the 78th section for not making such return. WARD v. REED, 22 N. B. R. 279.

88. **Setting Aside Proceedings.**]—Where in an application to set aside proceedings (as in the case of an action against a justice of the peace, for acts done under a conviction which has not been quashed) the facts relied upon would be a pleadable bar to the action, laches will not be imputed to defendant because he does not apply before entering an appearance, though it might if he waited until after the expiration of the time for pleading had expired. DONELLY v. TEGART, 5 P. R. 225.

Setting Aside Proceedings.]—In an action against a justice of the peace for false imprisonment and for acting in his office maliciously and without reasonable and probable cause, an application was made before statement of claim to set aside the proceedings under s. 12 of R. S. O. 1887 c. 73, on the ground that the conviction of the plaintiff made by the defendant, had not been quashed. It appeared, however, that the plaintiff was arrested and imprisoned under a warrant issued by the defendant, which in fact had no conviction to support it :—Held, not a case within s. 12. Per Robertson, J., that the plaintiff had a complete cause of action without setting aside the conviction. Per Meredith, J., that the application was premature. WEBB v. SPEARS 15 P. R. 232.

89. **Tender of Amends.**]—Where a magistrate is sued in trespass for an illegal proceeding, under 4 & 5 Vict. c. 26, he may give in evidence a tender of amends, under the plea of general issue. MOORE v. HOLDITCH, 7 U. C. R. 207.

90. **Trespass.**]—In trespass against a magistrate for false imprisonment and seizing and selling goods and chattels where he suffers judgment by default, it is unnecessary for the plaintiff to prove that he gave notice of action or commenced his suit within six months. MILLS v. MONGER, 4 O. S. 383.

91. **Trespass.**]—It is a good count in trespass against a justice on motion in arrest of judgment, that he with force and arms issued his warrant, whereby he caused the plaintiff to be wrongfully imprisoned without any reasonable cause, until the plaintiff gave his note to A. to obtain his discharge. BRENNAN v. HATELIE, 6 O. S. 308.

92. **Trespass.**]—A count alleging that defendants were justices of the peace, &c., and assuming to act as such justices, but without any jurisdiction or authority in that behalf, caused a distress warrant to be issued against the plaintiff's goods for $50, which they had adjudged the plaintiff to pay under and by virtue of a certain conviction made by them without any jurisdiction, and caused the plaintiff's goods to be sold thereunder; which conviction was afterwards duly quashed on application to the plaintiff to this court, whereby the plaintiff lost the use and value of his goods, and was put to costs in getting the conviction quashed :—Held, a count of trespass; and that the plaintiff was properly non-suited, the cause of action being an act done by defendants in the execution of their duty, with respect to matters within their jurisdiction. Quære, if the plaintiff had been entitled to succeed in trespass whether he could have recovered the costs of quashing the conviction as damages. HALLETT v. WILMOT, 40 U. C. R. 263.

93. **Trespass.**]—The magistrate in a case brought before him by a complainant who alleged that the plaintiff had taken a sheep of his off the road and sheared it, and kept the wool, made an order which was subsequently embodied in a document purporting to be a conviction,

which stated that the plaintiff "unlawfully took a certain ewe from R. W's. flock on the 4th June last, at Pickering, and having heard the matter of the said complaint, I do adjudge that the said ewe and fleece is the property of the said W., and I order and adjudge the said Jones be discharged therefrom upon giving up the said ewe and fleece to the said W. and paying the costs of this suit." The costs were fixed at $20, and the paper contained the usual distress clause, but the warrant to commit in case of default, was struck out :—Held, on motion for nonsuit, that, although the pretended conviction was clearly unsustainable, it should nevertheless have been quashed before the action brought. JONES v. HOLDEN, 13 L. J. 19.

94. **Trespass.**]—When 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, that their assuming to amend the conviction was not a quashing of a conviction, and therefore trespass would not lie against the justice. MCLELLAN v. MCKINNON 1 O. R. 219.

95. **Trespass.**]—Held, that the defendant, who was a visiting superintendent and commissioner of Indian affairs for the Brant and Haldimand reserve, had jurisdiction under the statutes relating to Indian affairs to act as a justice of the peace in the matter of a charge against the plaintiff for unlawfully trespassing upon and removing cordwood from the Indian reserve in the county of Brant. Held, also, that the discharge of the plaintiff from custody on habeas corpus was not a quashing of his conviction on the above charge; and that the conviction remaining in force, and the defendant having had jurisdiction, the action, which was trespass for assault and imprisonment maliciously and without reasonable and probable cause, could not be maintained but the action should have been case; but that even if the form of the action was right, there was no evidence of want of reasonable and probable cause. HUNTER v. GILKISON, 7 O. R. 735.

96. **Trespass.**]—Where the defendant, a justice of the peace, had laid an information before another magistrate, by whom the plaintiff was arrested on a warrant which turned out to have been illegal or void, and imprisoned, the defendant and the other magistrate having refused to admit him to bail :—Held, in trespass by the plaintiff against defendant, charging him with the arrest and imprisonment, that in the absence of any other evidence, the mere refusal by defendant to admit the plaintiff to bail was no evidence that the defendant authorized the illegal arrest and imprisonment of the plaintiff, and a nonsuit was ordered. MCKINLEY v. MUNSIE, 15 C. P. 230.

97. **Trespass** — LIABILITY OF — ISSUING OF EXECUTION.]—A justice of the peace is not liable in an action of trespass for issuing a second execution for a balance due upon a judgment recovered under the Act 4, Wm. IV. cap. 45, before the first execution is returned—the matter being within the justice's jurisdiction. Such an execution may be irregular, but it is not void. STEWART v. HAZEN, 2 All. N. B. R. 254.

98. **Trespass** — ADMISSION OF CONSTABLE.]—The admission by a constable, sued in trespass with two justices, that a paper produced at the trial was a copy of the warrant under which he committed the trespass, is not sufficient evidence as against the justice to entitle the constable to claim an acquittal under s. 6 of 24 Geo. III. c. 44. KALAR v. CORNWALL, 8 U. C. R. 681.

99. **Two Justices Required** — CONVICTIONS BY ONE.]—Where defendant, sitting alone as a magistrate, convicted the plaintiff for selling liquor without a license in a township where a temperance by-law was in operation :—Held, that he was liable in trespass, for the Temperance Act gives jurisdiction only to two justices. Held, however, that the conviction, though void, must be quashed under C. S. U. C. c. 126, s. 3, before such section would lie. GRAHAM v. MCARTHUR, 25 U. C. R. 498.

100. **Venue.**]—The effect of rule 254 of the O. J. Act is to abolish all local venues, as well as those made so by statute as at the common law, except in actions of ejectment. LEGACY v. PITCHER, 10 O. R. 620, IRELAND v. PITCHER, Ib. 631.

101. **Venue.**]—In an action for malicious arrest and for destruction of liquor under R. S. O. 1877 c. 73 :—Held, following Legacy v. Pitcher, 10 O. R. 620, that in such an action the venue need not be laid where the offence was committed. BOND v. CONMEE, 15 O. R. 716, 16 A. R. 398.

102. **Venue.**]—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 16, A. R. 398. (Affirmed on appeal to S. C. Canada, Mar. 20, 1890.)

103. **Warrant** — NECESSITY TO QUASH.] —The plaintiff produced a warrant issued for his arrest for not finding sureties for the peace, in pursuance of an order to that effect recited in the warrant :—Held, that such warrant was prima facie evidence of the order. Held, also, that under C. S. U. C. c. 126, s. 3, no action would lie against the magistrate for anything done under the order or under the warrant to procure the appearance of the accused, until the same was quashed SPRUNG V. ANDERSON, 23 C. P. 152.

104. **Warrant for Non-Payment of Taxes.**]—Under C. S. U. C. c. 55, s. 86, a warrant may issue to imprison a person for nonpayment of statute labour tax, without first summoning him to answer or making a conviction. It is not necessary, under C. S. U. C. c. 126, to set aside such warrant before an action can be brought against a justice. The point decided being new, the court discharged without costs a rule nisi obtained to quash the conviction. REGINA v. MORRIS, 21 U. C. R. 392.

105. **Warrant Omitting Amount.**] — Defendant, a justice, issued his warrant under C. S. C. c. 103, s. 67, to commit the plaintiff for thirty days for non-payment of the costs of an appeal to the quarter sessions, unless such sum and all costs of the distress and commitment and conveying the plaintiff to gaol should be sooner paid, but he omitted to state in the warrant the amount of costs of the distress and commitment. The plaintiff having been committed on this warrant, sued defendant for false imprisonment :— Held, that though it was the duty of the justice to ascertain and state such amount, yet the omission to do so, though it might have occasioned the plaintiff's discharge, did not shew either a want or an excess of jurisdiction, but rather an irregular exercise of it; and that defendant therefore was not liable in trespass. Held, also, that the determination as to these costs was clearly a judicial, and not merely a ministerial act. DICKSON V. CRABBE, 24 U. C. R. 494.

106. **Warrant.**] — The warrant committed the plaintiff also for the charges of conveying him to gaol, but omitted to state the amount :—Held, following Dickson v. Crabbe, 24 U. C. R. 494, that this would not make defendant a trespasser. MOFFAT V. BARNARD, 24 U. C. R. 498.

107. **Warrant Omitting to State Conviction.**]—Omitting to state conviction of a defendant in his warrant of commitment will not subject a justice to an action for false imprisonment, provided the actual conviction is proved upon his defence. WHELAN V. STEVENS, Tay. O. R. 245.

108. **Warrant** — PROTECTION UNDER — EXECUTION SUBSTITUTED FOR WARRANT.] —The Provincial Statute, 34 Geo. III., c. 15, protecting officers and others, their assistants, acting under the warrant of a justice, extends to and includes them, when acting under an execution substituting for such warrant. SEAMAN 2nd v. DEWOLF, 1 Thom. N. S. R. 193.

109. **Warrant Under Absconding Debtors Act.**]—Defendant M., a magistrate, gave a warrant to defendant K., a constable, on the 23rd September, under s. 200 of the Division Courts Act, to attach the goods of G. in the possession of the plaintiff and others, who were about to abscond. Under this certain goods were seized, and an action was brought against the constable, the magistrate, and the creditor. The magistrate having issued such warrant without the affidavit required :—Held, that he had no jurisdiction whatever, and was therefore a trespasser. The first seizure took place on the 23rd September, but the goods were then left with the plaintiff, on his giving a receipt, and on the 25th they were taken away by defendant K. and his creditor. The notice of action was for the seizure on the 25th. It was left to the jury to

say when the actual seizure took place, and they found that it was on the 25th. Held, that this was a new trespass, for which the magistrate was liable, and a verdict against him was upheld. GRAY v. MCCARTY, 22 U. C. R. 568.

110. **Warrant Wider than Information.**]—One R. laid an information before G., a police magistrate, stating that one P. G., the keeper of a tavern duly licensed, kept a disorderly house, &c., and prayed for a warrant against the said P. G. and all others found and concerned in her house. A warrant was accordingly granted, by G., directed to all constables, commanding them to apprehend P. G. "and all others found and concerned in her house to answer," &c. Under this the defendants, except R. and G., went to the house and arrested P. G. and several others, among them the plaintiff, a traveller and a guest at the house, there being then no disturbance in the house :—Held, that the arrest of the plaintiff was illegal, there being no charge against him; but that R. having prayed process only against P. G., as not liable; and a non-suit was set aside as to all the other defendants. CLELAND V. ROBINSON, 11 C. P. 416.

111. **Witness** — ARREST.]—Where a police magistrate acting within his jurisdiction under R. S. C. c. 174, s. 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. GORDON V. DENISON, 24 O. R. 576, 22 A. R. 315.

II. ADJOURNMENT OF PROCEEDINGS.

1. **Adjournment.**]—The magistrate, on the 12th of November, adjourned the case, for one week, for judgment, and against the protest of defendant's counsel, changed the day, and gave judgment on the 18th :—Held, that the conviction must be quashed. REGINA V. HALL, 8 O. R. 407.

2. **Where the magistrate adjourned the hearing of a case under the Canada Temperance Act, 1878, for more than a week** contrary to 32 & 33 Vict. c. 31, s. 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. FRENCH, REGINA V. ROBERTSON, 13 O. R. 80. Followed in REGINA V. HUNTER, IB. 82n.

3. 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, he had estopped himself from objecting afterwards that such subsequent proceedings on the prosecution were on this ground illegal. Semble, that the provisions of s. 46 of 32 & 33 Vict. c. 31 (D)., that no such 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, 13 O. R. 616.

4. 32 & 33 Vict. c. 31, s. 46 (D.), 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, REGINA V. GOULAIS, 14 O. R. 613.

5. 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 & 33 Vict. c. 31, s. 46 (D.) which is to be read into the Canada Temperance Act by virtue of s. 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 im-

posed, 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 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. REGINA v. HALL, 12 P. R. 142.

6. **Adjournment.**]—Where, at the conclusion of the evidence, on a charge of selling liquor contrary to the Canada Temperance Act, the magistrate reserves his judgment for the purpose of reaching a decision or of considering the amount of the penalty, he is not restricted to the one week mentioned in s. 48 of R. S. C. c. 178. Regina v. Hall, 12 P. R. 142, followed. REGINA v. ALEXANDER, 17 O. R. 458.

7. A justice of the peace in summary proceedings before him cannot adjourn sine die for the purpose of considering his judgment. REGINA v. QUINN, 28 O. R. 224.

8. **Adjourned Hearing** — SUMMARY CONVICTION — DEPOSITIONS IN WRITING.] If on an adjourned hearing either or both of the parties concerned do not appear the justice present may proceed with the hearing. Code sec. 590 provides that all evidence shall be taken down in writing, and failure to do so in a summary conviction is a ground for quashing the conviction. DENAULT v. ROBIDA, 8 C. C. C. 501, Q. R. 10, S. C. 199.

9. **Adjournment of Hearing.**]—At the hour fixed for the return of a summons for a violation of the Canada Temperance Act no one appeared for the defendant. The justices having mislaid the information, they adjourned until 12 o'clock the same day, after which they convicted the defendant :—Held, they had not lost jurisdiction by failing to prove service until the adjourned hearing. REX v. WIPPER, 34 N. S. R. 202.

10. **Adjournment of Judgment Sine Die** — IRREGULARITY.]—No adjudication having been made at the hearing of a complaint, an adjournment sine die is sufficient to render further proceedings nugatory, and a conviction by the magistrate, in the absence of the accused, made thereafter is null and void for loss of jurisdiction. The conviction must be quashed. REGINA v. QUINN, 28 O. R. 224, 2 C. C. C 153.

11. **Adjournment Sine Die.**]—A magistrate who adjourns a hearing after all the evidence is in, without naming a day, cannot afterwards convict. REGINA v. MORSE, 22 N. S. R. 298, REGINA v. GOUGH, 22 N. S. R. 516.

III. AMENDMENT.

1. **Amending Conviction.**]—A conviction, substantially defective, cannot be amended. REGINA v. ROSS, H. T. 3 Vict. O. R.

2. Held, that an amended conviction cannot be put in after the return of a certiorari. REGINA v. MACKENZIE, 6 O. R. 165. See also REGINA v. BENNETT, 3 O. R. 45; REGINA v. ELLIOTT, 12 O. R. 524; BOND v. CONMEE, 16 A. R. 398.

3. **Certiorari.**]—A magistrate may amend his conviction at any time before the return of the certiorari, and the court refused to quash because of the previous return of a bad conviction, especially where it had not been filed. REGINA v. MCCARTHY, 11 O. R. 657.

4. **Conviction.**]—Where a summary conviction, valid on its face, has been returned with the evidence upon which it was made, in obedience to a certiorari, the court is not to look at the evidence for the purpose of determining whether it establishes an offence, or even whether there is any evidence to sustain a conviction. Regina v. Wallace, 4 O. R. 127 followed. But where a conviction for an offence over which the magistrate had jurisdiction, is bad on its face, the court is to look at the evidence to determine whether an offence has been committed, and if so, it should amend the convection REGINA v. COULSON. 24 O. R. 246.

5. **Canada Temperance Act, 1878.**]—CONVICTION FOR FIRST OFFENCE — WHEN WRONG FORM USED — POWER OF COURT TO AMEND.]—In a conviction for a first offence under the Canada Temperance Act, 1878, the form (I. i) given by the Summary Convictions Act, 32 & 33 Vict. c. 31, awarding distress for non-

payment of the fine, and in default thereof, imprisonment, must be adopted, and not the form (1. 2). Where, in such a case, the form (1. 2) is adopted, it is not amendable under the 117th and 118th sections of the Canada Temperance Act. REGINA v. SULLIVAN; IN RE DWYER, 24 N. B. R. 149.

6. **Conviction** — CANADA TEMPERANCE ACT, 1878 — WHERE UNCERTAIN AS TO TIME OF OFFENCE — AMENDMENT — SECTION 118.]—To sustain a conviction the evidence must be reasonably sufficient to show that the offence existed and was committed at the time of the information and the facts necessary to support the charge must be stated expressly, and not left to be gathered from inference or intendment. Therefore, where a conviction under the Canada Temperance Act, 1878, made on the 4th August, stated that the defendant had sold spirituous liquors "within three months now last past," and the evidence of one witness proved a sale in May previous to the information (which was laid on the 25th July), and another witness proved a sale "since the 22nd June then last" :—Held, that the conviction was uncertain, as it was consistent with the evidence that the magistrate may have convicted on the testimony of the witness who proved a sale "since the 22nd June," which sale may have been after the date of the information :—Held, also, that the conviction could not be amended under the 118th section of the Act. REGINA v. BLAIR; IN RE HICKEY, 24 N. B. R. 72.

7. **Conviction.**]—Under s. 889, of the Criminal Code, if a conviction under any Act to which the procedure in the Code applies and for an offence over which the convicting magistrate has jurisdiction is brought up by certiorari (whether in aid of a writ of habeas corpus or on motion to quash the conviction is immaterial), the court may hear and determine the charge as disclosed by the depositions upon the merits, and may confirm, reverse, vary, or modify the decision. A conviction under the Indian Act, defective on its face, was amended by describing the offence accurately, and by substituting for imprisonment for six months and a fine of $50 and $5 costs or imprisonment for a further term of six months in default of payment of the costs or in default of sufficient distress, imprisonment for six months and a fine of $50 and $5 costs or imprisonment for a further term of three months in default of payment of the fine and costs. REGINA v. MURDOCK, 27 A. R. 443.

8. **Conviction** — IMPROPERLY INCLUDING COSTS.]—A conviction for a penalty, whereby defendant was ordered to pay the fine "forthwith within thirty days," is sufficient under Rev. Stat. c. 138, Form (L.). REGINA v. MCGOWAN, 6 All. N. B. R. 64.

9. **Conviction Uncertain** — AMENDMENT — CANADA TEMPERANCE ACT, 1878 — SECTION 118.]—Where a conviction under Canada Temperance Act stated that the defendant had sold "spirituous or other intoxicating liquors," and the proof was a sale of brandy, the conviction was amended under section 118 of the Act by striking out the words "spirituous or other." Quære, whether "spirituous" and "intoxicating" are not synonymous expressions and the conviction not therefore uncertain. REGINA v. BLAIR; IN RE MCCARTHY, 24 N. B. R. 71.

10. **Conviction Uncertain** — AMENDMENT — SECTION 118 — CANADA TEMPERANCE ACT, 1878.]—An information under the Canada Temperance Act, 1878, was laid on the 25th July, charging defendant with having sold spirituous liquors within three months then last past. The hearing took place on the 4th August, and the conviction, dated that day, found the defendant guilty of selling intoxicating liquors "within three months last past." One witness proved a sale "about two weeks" before his examination, and others respectively proved sales "within a month" and "some time last month" :—Held, that the conviction was bad for uncertainty, as it was quite consistent with the evidence of some of the witnesses that the sales of liquor that they testified to might have been after the 25th July (the date of the information), and that the conviction could not be amended. REGINA v. BLAIR; IN RE KEARY 24 N. B. R. 74.

11. **Improperly Including Costs.**] — Where costs had been improperly included in a conviction for breach of by-law of city of Fredericton, the amount was deducted, and the conviction sustained for the penalty. EX PARTE MOWRY 3 All. N. B. R. 276.

12. **Information.**]—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 indorsed 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, withdraw 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 re-sworn; 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 & 33 Vict. c. 20, s. 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 s. 46, refrain from adjudicating and if it were dismissed without a hearing on the merits, there would be no certificate. In re Conklin, 31 U. C. R. 160.

13. **Penalty** — Excessive Fee — Information for Indictable Offence — Pleading — Amendment.]—An information having been laid by the plaintiffs before the defendant, a justice of the peace, for an indictable offence under ss. 210 (2) and 215 of the Criminal Code, over which the defendant had no summary jurisdiction as a justice :—Held, that he was not entitled to any fee whatever, and that the plaintiffs while they were entitled to recover by action the amount of the fee which they paid, could not maintain an action under s. 3 of R. S. O. 1897, c. 95, or under s. 902, s.-s. 6, of the Criminal Code, to recover a penalty from the defendant for receiving a larger amount of fees as a justice of the peace than he was entitled to. Bowman v. Blyth, 7 E. & B. 26, applied and followed. It was alleged by the statement of claim that the defendant wrongfully, illegally, and maliciously, and without reasonable or probable cause, demanded from the plaintiffs the sum of, etc., contrary to the Ontario Act. At the trial the plaintiffs were allowed to amend by substituting "wilfully" for "maliciously and without reasonable or probable cause" and by making an alternative claim under s. 902, s.-s. 6, of the Criminal Code :—Held, that the amendments were properly made. McGillivray v. Muir, 23 Occ. N. 282, 6 O. L. R. 154, 2 O. W. R. 663.

14. **Right to Amend Summary Conviction After Return to the County Court.**]—Regina v. McAnn, 4 B. C. R. 587.

IV. Applications to Quash.

1. **Adjudging Commitment**] — Application of Form.]—A conviction under the Act 33 Vict. cap. 23, for selling liquor without license, is bad if, in addition to the costs of the prosecution allowed by the Act, the justices adjudge the defendant in default of payment to be committed to gaol for a certain time unless the penalties and costs, together with the costs of commitment and conveying him to gaol, be sooner paid. The form of commitment (L.) in 1 Rev. Stat. cap. 138, specifying the costs of commitment and conveying the defendant to gaol, is not applicable to all cases, but only where the Act under which the penalty is imposed authorizes the justices to award such costs. Reg. v. Harshman, 1 Pug. N. B. R. 317.

2. **Arrest Without Warrant.**]—A justice of the peace, who issues his warrant for the arrest of a person charged with felony without the information having been sworn is liable in trespass. Sections 22 & 23 of the Criminal Code are a codification of the common law, and merely justify the personal arrest by the peace officer, whether justice or constable, on his own view, or on suspicion, or calling on someone present to assist him. They do not authorize a justice to direct a constable to make an arrest elsewhere without a warrant. McGuiness v. Dafoe, 27 O. R. 117, 23 A. R. 704.

3. **Breach of the Peace.**]—In a commitment for want of finding sureties for the peace, is it necessary to state that the

justice had information on oath which would justify him in binding the prisoner to keep the peace. DAWSON v. FRASER, 7 U. C. R. 391.

4. **Breach of the Peace.**]—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 injury. IN RE ROSS, 3 P. R. 301.

5. **Breach of the Peace.**]—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. REGINA v. WASHINGTON, 46 U. C. R. 221.

6. **Certiorari** — EXAMINATION OF EVIDENCE.]—A defendant is not entitled to remove proceedings by certiorari to a superior court from a police magistrate or a justice of the peace after conviction, or at any time, for the purpose of moving for a new trial for the rejection of evidence or because the conviction is against evidence, the conviction not being before the court and no motion made to quash it. REGINA v. RICHARDSON, 8 O. R. 651.

Even had a motion to quash the conviction been made in this case, and an order nisi applied for upon the magistrate and prosecutor for a mandamus to the former to hear further evidence, which he had refused, both motions would have been discharged, the magistrate appearing to have acted to the best of his judgment and not wrongfully, and his decision as to the further evidence involving a matter of discretion with which the court would not interfere. IB.

7. **Certiorari** — RIGHT TO BE TAKEN AWAY BY APPEAL.]—The defendant was convicted by two justices of the peace under the Weights and Measures Act, 42 Vict. c. 16, s. 14, s.-s. 2 (D.), as amended by 47 Vict. c. 36, s. 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. 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. REGINA v. DUNNING, 14 O. R. 52.

8. **Certiorari** — MAKING FALSE RETURN.]—If the convicting magistrate make a false return to a writ of certiorari directed to him, the truth or falsity of the return cannot be inquired of on motion to quash it. The recourse of the injured party is by action against the magistrate or by information at the instance of the Attorney-General. REGINA v. NICHOLS, 24 N. S. R. 151.

9. **Commitment** — FORM OF.] — Held, that a warrant reciting a coroner's inquisition, and stating the offence as follows : that C. "stands charged with having inflicted blows on the body of the said F.," and not shewing the place where the blows, if any, were inflicted, or the offence, if any, was committed, is bad. IN RE CARMICHAEL, 10 L. J. 325.

10. **Commitment.**]—It lies on a party alleging that there is a valid conviction to sustain the commitment, to produce the conviction. IN RE CROW, 1 C. L. J. 302.

The warrant of commitment should shew before whom the conviction was had. IB.

An adjudication mentioned in the margin of the warrant of commitment, where there are several warrants, each for a distinct period of imprisonment, that the term of imprisonment mentioned in the second and third warrant shall commence at the expiration of the time mentioned in the warrant immediately preceding,

is valid. If the portions in the margin of the second and third warrants could not be read as portions of the warrants, the periods of imprisonment would nevertheless be quite sufficient, the only difference being that all the warrants would be running at the same time, instead of counting consecutively. IB.

11. **Commitment** — FAILURE TO STATE PLACE OF CRIME.]—A warrant of commitment which omits to state the place where the alleged crime was committed is defective. IN RE BEEBE, 3 P. R. 270.

In favour of liberty, it is the duty of a Judge on an habeas corpus, when doubting the sufficiency of a commitment, to discharge the prisoner. IB.

12. **Commitment for Indefinite Time.**]—A warrant for commitment for indefinite time, or which directs the prisoner to be kept in custody till the costs are paid, without stating the amount, is bad. DAWSON V. FRASER, 7 U. C. R. 391.

13. **Commitment of Unqualified Person.**] — A commitment under 31 Vict. c. 16, signed by one qualified justice of the peace, and by an alderman who has not taken the necessary oath, is invalid to uphold the detention of a prisoner confined under it, though it might be a justification to a person acting under it, on an action against him. REGINA V. BOYLE, 4 P. R. 256.

14. **Commitment** — RECITAL OF INVALID CONVICTION — DUPLICITY.]—A commitment of the defendant to gaol recited a conviction for "unlawfully procuring or attempting to procure a girl of seventeen years to become, without Canada, a common prostitute, or with intent that she might become an inmate of a brothel elsewhere" :—Held, that the commitment was bad on its face, as it recited a conviction which was invalid for duplicity and uncertainty. The commitment, although it alleged a conviction, could not be supported under s. 800 of the Criminal Code, because there was not a good and valid conviction to sustain it, the conviction returned being that the prisoner, at H., &c., did unlawfully procure a girl of seventeen years, I. D., to become, without Canada, an inmate of a brothel kept by the prisoner at L. in the state of New York, one of the United States of America; which did not come within any of the provisions of s. 185 of the Code. The words "a court of record" in the exception in s. 1 of the Habeas Corpus Act, R. S. O. 1897 c. 83, includes only superior courts of record, and do not include a magistrate's court exercising the power conferred by s. 785 of the Criminal Code. REGINA V. GIBSON, 29 O. R. 660.

15. **Conviction** — ALTERNATIVE.]—A conviction by two justices for taking certain timber feloniously or unlawfully :—Held, bad, for it should not have been in the alternative; if the taking was unlawful only, not felonious, it should have shewn how unlawful; and also that the offence came under some statute which gave the justices power to convict. REGINA V. CRAIG, 21 U. C. R. 552.

16. **Conviction** — BY-LAW MUST BE SET OUT IN CONVICTION — GROUNDS IN RULE.]—Defendant was convicted of allowing his cattle to go at large in the township of Cornwallis :—Held, that the conviction was bad in that it did not set out the by-law or ordinance of the Sessions creating the offence; and that the objection was covered by the ground taken in the rule that the conviction did not show any offence for which it could lawfully be made. STAR V. HEALES, 4 R. & G. N. S. R. 84.

17. **Conviction** — BY-LAW.]—Where the conviction purported to be for an offence against a by-law, but shewed no such offence, it was quashed, and it was held that it could not be supported as warranted by the general law. IN RE BATES, 40 U. C. R. 284.

18. **Conviction** — BY-LAW MUST BE SET OUT IN CONVICTION — GROUNDS IN RULE.]—Defendant was convicted of allowing his cattle to go at large in the township of Cornwallis :—Held, that the conviction was bad in that it did not set out the by-law or ordinance of the sessions creating the offence, and that the objection was covered by the ground taken in the rule that the conviction did not show any offence for which it could be lawfully made. STARR V. HEALES, 4 R. & G. N. S. R. 84.

19. **Conviction** — CERTAINTY.]—The charge in a conviction must be certain,

and so stated as to be pleadable in the event of a second prosecution for the same offence. REGINA v. HOGGARD, 30 U. C. R. 152.

20. **Conviction** — CERTIORARI — SELLING UNWHOLESOME MEAT — PUBLIC HEALTH ACT — CRIMINAL CODE.]—A charge was laid against the defendant of exposing and offering for sale on a public market meat unfit for food for man. The charge was so worded as to leave it doubtful whether it was intended for one under s. 122 of the Public Health Act or under s. 194 of the Criminal Code. The magistrates treated the charge at first as one of an offence against the Code, and, the defendant electing against a summary trial, took evidence, and adjourned for a week. They then announced that a case had been made out under the provisions of the Public Health Act, but not such as to warrant sending for trial under the Code, and adjourned for some days to enable the accused to put in a defence under the new conditions, if he so desired. The defendant objected to the case being proceeded with under the Public Health Act, and offered no defence, and the magistrates then convicted him :—Held, that the conviction must be quashed. It is not competent for magistrates, where the 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. REX v. DUNGEY, 21 Occ. N. 435, 2 O. L. R. 223.

21. **Conviction** — CERTIORARI — NO RETURN OF EVIDENCE — ABSENCE OF RECORD OF PROCEEDINGS BEFORE JUSTICE — INVALIDITY OF CONVICTION.]—REX v. MCGREGOR (B. C.), 2 W. L. R. 378.

22. **Conviction** — COMMON LAW REQUISITION.]—Where a form of conviction is not sanctioned by any statute, it must be legal according to the principles of the common law; and in that case a conviction, which does not express that the party had been summoned, nor that he appeared, nor that the evidence was given in his presence, cannot be supported. MOORE v. JARRON, 9 U. C. R. 233.

23. **Conviction Quashed** — COSTS.]—REX v. DUNGEY, 2 O. W. R. 620.

24. **Conviction** — EFFECT OF DISCHARGE.]—Held, in this case, that the discharge of the plaintiff from custody on habeas corpus was not a quashing of the conviction. HUNTER v. GILKISON, 7 O. R. 735.

25. **Conviction** — ESSENTIALS OMITTED — INFORMATION AND WARRANT CAN NOT BE LOOKED AT TO SEE THAT AN OFFENCE HAS BEEN COMMITTED.]—A conviction for selling intoxicating liquor contrary to the provisions of the Canada Temperance Act contained no reference to the Act, did not show where the offence was committed, and merely adjudged that the defendant pay $100 for selling intoxicating liquors :—Held, bad. The information and warrant cannot be looked at to see that an offence has been committed. WOODLOCK v. DICKIE, 6 R. & G. N. S. R. 86, 6 C. L. T. 142.

26. **Conviction** — EXCEPTIONS.]—In a conviction under the Act 15 Vict. c. 51, which prohibits the sale of intoxicating liquors, except beer, ale, porter, and cider, it is insufficient to allege that the sale was contrary "to the Act of Assembly." The conviction should negative the exceptions to the Act. EX PARTE CLIFFORD, 3 All. N. B. R. 16.

27. **Conviction** — FILING SECOND CONVICTION.]—Semble, that after a first conviction has been returned to the quarter sessions and filed, the justice, if he thinks it defective, may file a second. WILSON v. GREYBIEL, 5 U. C. R. 227.

28. **Conviction for Fourth Offence Without Notice** — PREVIOUS OFFENCE.]—Defendant having been summoned for selling intoxicating liquors without license made a written confession, upon which the justices inflicted a penalty upon him as for a fourth offence. Defendant was not present at the trial, nor was any intimation given him of any intention to proceed against him except as for a first offence. The original convictions in the three previous actions against the defendant were produced and read at the trial, but no other evidence was offered :—Held, on certiorari, that the conviction should be quashed. MCGILLIVRAY v. MCDONALD, 3 N. S. D. 320.

29. **Conviction for Violation of City Charter** — ALTERNATIVE PUNISHMENT — PENALTY — HOW RECOVERED.] — The defendant having been convicted of a violation of the charter of the city of Halifax, Acts 1864, chapter 81, section 227, by keeping a disorderly house was adjudged to pay the sum of $40 and "if the said sum be not paid forthwith, to be imprisoned in the city prison for the space of ninety days." :—Held, that the alternative punishment imposed was authorized by section 139 of the Act; also, that under the Acts of 1882, chapter 25, section 19, the penalty was clearly recoverable in the name of the city of Halifax before the stipendiary magistrate at the police court. THE CITY OF HALIFAX v. BROWN, 6 R. & G. N. S. R. 103, 6 C. L. T. 144.

30. **Conviction** — INTITULING PAPERS.] —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. R. 132.

31. **Conviction** — IRREGULARITIES IN]— In an action for breach of the License Laws, where the plaintiff is described in the writ as clerk of the county of Colchester, and he is only clerk for one of the districts therein, and where the process was served by a person not a sworn constable, and the conviction did not follow the exact words of the statute. :— Held, not sufficient irregularity to quash the proceedings. MCCULLY v. MCKAY, Cochran, N. S. R. 82.

32. **Conviction** — LIMITATION IN ACT.] —The Act 32 & 33 Vict. c. 31, s. 17, (D.), 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, 12 P. R. 24.

33. **Conviction** — MINUTE OF — ABSENCE OF FORMAL ENTRY — QUASHING — COSTS.]—Where a justice of the peace convicts or makes an order against a defendant, and a minute or memorandum of such is then made, the fact that no formal conviction has been drawn up is no reason why the conviction should not be quashed. The court has jurisdiction by virtue of s. 119 of the Judicature Act to award the costs of a motion to quash a conviction under an Ontario statute against either the justice of the peace or informant. REX v. BENNETT, 4 O. L. R. 205, 1 O. W. R. 360, distinguished. REX v. MANCION, 24 Occ. N. 288, 8 O. L. R. 24, 3 O. W. R. 756.

34. **Conviction** — MUNICIPAL BY-LAWS.] —A conviction under a by-law, must shew the by-law, that the court may judge of its sufficiency. REGINA v. ROSS, M. T. 3 Vict. O. R.

36. **Conviction** — MUNICIPAL BY-LAW.] —And it must shew by what municipality the by-law was passed. REGINA v. OSLER, 32 U. C. R. 324.

Quære, whether it is essential to state the date or title of the by-law. IB.

37. **Conviction** — NAME OF INFORMANT.]—The name of the informant or complainant must in come form or other appear on the face of a conviction. IN RE HENNESY, 8 L. J. 299.

38. **Conviction** — NOTICE LO MAGISTRATE — RECOGNIZANCE.]—Held, that 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's instance it may have been brought there. Where, therefore, on an application for a habeas corpus under R. S. O. 1877 c. 70, a certiorari had issued, and in obedience to it conviction had been returned, the conviction was quashed on motion, though there had been no notice to the magistrate, or recognizance. REGINA v. LEVECQUE, 30 U. C. R. 509, distinguished. REGINA v. WEYLAN, 45 U. C. R. 396.

40. **Conviction** — OBJECTING TO REGULARITY OF CERTIORARI.]—In shewing cause to a rule nisi for quashing a con-

viction, objection may be taken to the regularity of the certiorari, and a separate application to supersede it need not be made. REGINA v. MCALLAN, 45 U. C. R. 402.

41. **Conviction** — OFFENCE IN, DIFFERENT FROM THAT CHARGED IN SUMMONS.]— An action was brought against the defendant, in the police court, at the suit of the city of Halifax, for an alleged violation of a city ordinance in keeping a marine and junk store without license therefor, and, after trial, the defendant was convicted of keeping a rag and junk shop without license:—Held, per Weatherbe and Rigby, JJ., that the conviction was bad in that the offence for which the defendant was convicted was different from that charged in the summons. Per Rigby, J., that the criminal side of the city court had jurisdiction over the subject matter, and could afford complete redress, and that the prosecution was wrongly instituted in the police court, at the suit of the city. THE CITY OF HALIFAX v. O'CONNOR, 3 R. & G., N. S. R. 190.

42. **Conviction** — OPENING UP ORDER.] —Where an order quashing a conviction is made upon default of any one appearing to support it, the effect of quashing it not only involving the restoration of the fine paid by the defendant, but exposing the convicting magistrate to an action, there is inherent jurisdiction in the court to open up such order so made. The jurisdiction of the full court to rehear motions to quash convictions has not been taken away by the Judicature Act, but still exists in the divisional courts. REGINA v. FEE, 13 O. R. 590.

43. **Conviction** — ORDER NISI TO QUASH — DEATH OF PROSECUTOR.]— The death of the prosecutor, who is also informant, after a summary conviction, before the service on him of an order nisi to quash, does not prevent the court from dealing with the matter and from quashing the conviction. REGINA v. FITZGERALD, 29 O. R. 203.

44. **Conviction** — PARTIES.]—On application to quash, the convicting justice must be made a party to the rule. REGINA v. LAW, 27 U. C. R. 260.

45. **Conviction** — PLACE OF MAKING — DISTRESS — HARD LABOUR.]—On a motion to set aside a conviction and warrant of commitment on the grounds, 1. that the conviction was not in the magistrate's office but in that of the clerk of the peace; 2. that the conviction did not contain a clause of distress; 3. and that the conviction only warranted the imprisonment without hard labour, whereas the prisoner had been committed with hard labour :— Held, that the prisoner must be discharged but on the last ground only. REGINA v. YEOMANS, 6 P. R. 66.

46. **Conviction** — PRIOR CONVICTION.]— 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. REGINA v. BERNARD, 4 O. R. 603.

47. **Conviction** — SEAL.]—A conviction must be under seal. IN RE RYER AND PLOWS, 46 U. C. R. 206. BOND v. COMMEE, 15 O. R. 716, 16 A. R. 398.

48. **Conviction** — SEPARATE OFFENCES — DISPOSITION OF BOTH CASES AFTER HEARING EVIDENCE IN BOTH.]—Two informations were preferred before a justice of the peace against the accused for distinct offences of selling liquor to Indians. At the conclusion of the first case, the magistrate reserved his decision, and proceeded with the second case, in which he convicted, and then dismissed the first. On an application to quash the conviction, the magistrate stated on affidavit that in convicting he was governed only by the evidence in the case in which the conviction was made :—Held, that the postponement by the magistrate of his decision in the first case until he

had concluded the second, did not, under the circumstances, render the conviction in the second case bad in law. REGINA v. MCBERNY, 3 C. C. C. 339, distinguished. REX v. SING, 22 Occ. N. 423, 9 B. C. R. 254.

49. **Conviction** — STATUTORY FORM.]—As to certain objections suggested to a conviction, it was held a sufficient answer that the conviction followed the form prescribed by the Act, C. S. C. c. 103, which was intended as a guide to magistrates, and to prevent failure of justice from trivial objections. REID v. MCWHINNIE, 27 U. C. R. 289.

50. **Conviction** — TWO OFFENCES — ONE PENALTY.]—Held, that the conviction was bad, because, while covering two several and distinct offences under the same by-law, it imposed only one penalty. REGINA v. GRAVELLE, 10 O. R. 735.

51. **Conviction** — UNCERTAINTY.]—A prisoner was convicted three times the same day for insolent conduct to a magistrate on the bench, and detained in prison under three several warrants, all dated the same day, the periods of imprisonment in the two last commencing from the expiration of the one preceding it, but the first to be computed "from the time of his arrival and delivery by the bailiff into your, the gaoler's, custody, thenceforward":—Held, that the magistrate had a right to convict and to sentence for continuing periods, but that the periods of imprisonment, depending on the will of the officer who was to deliver him to the gaoler, were uncertain, and the prisoner was therefore entitled to be discharged. REGINA v. SCOTT, 2 C. L. J. 323, See also, IN RE CROW, 1 C. L. J. 302.

53. **Conviction** — UNCERTAINTY.]—The defendant was convicted before a magistrate for that he "did in or about the month of June, 1880, on various occasions," commit the offence charged in the information; and a fine was inflicted "for the said offence":—Held, that the conviction was bad, under 32 & 33 Vict. c. 21, s. 25, (D.), as shewing the commission of more than one offence. REGINA v. CLENNAN, 8 P. R. 418.

54. **Conviction** — UNCERTAINTY.]—An allegation in a conviction that the offence was committed between the 30th of June and 31st July was held a sufficiently certain statement of time. REGINA v. WALLACE, 4 O. R. 127.

55. **Conviction** — UNCERTAINTY.]—Conviction held bad, as there had been no offence committed against the Act 32 & 33 Vict. c. 21, s. 110, (D.), under which the defendant had been convicted, and also in not shewing the time and place of commission of the offence. REGINA v. YOUNG, 5 O. R. 400.

56. **Conviction Under License Law Void Where Defendant Not Present at the Trial, and no Affidavit of Service.**]—The court made absolute a rule nisi for a habeas corpus where it appeared that the prisoner had been arrested on an execution for penalties under the License Laws, the justice having proceeded with the cause in the absence of defendant without an affidavit of the service of the summons although on the hearing of the rule nisi it was made to appear that the summons had actually been served. IN RE DONALD MCEACHERN, 1 R. & G. N. S. R. 321.

57. **Conviction** — VALIDITY OF BY-LAW.]—Held, that the validity of a by-law might be questioned on a motion to quash the conviction made under it. REGINA v. CUTHBERT, 45 U. C. R. 19.

58. **Conviction** — VARIANCE FROM MEMORANDUM.]—Held, 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. REGINA v. SMITH, 46 U. C. R. 442.

59. **Void Conviction** — ACTION EN NULLITE.]—A conviction made by a person illegally exercising the functions of a justice of the peace is void, and may be attacked by way of a direct action to declare it void. CORPORATION OF HAM NORD v. JUNEAU, Q. R. 21 S. C. 530.

60. **Conviction** — VOID FOR UNCERTAINTY.]—Where the information in a conviction charged the defendant with measuring or surveying lumber intended for exportation in violation of the Act of Assembly 8 Vict. c. 81, and the evidence referred to three distinct acts, but it did

not appear for which of them the defendant had been convicted :—Held, that the conviction was bad for uncertainty. Held, also, that the court had no power to allow costs on the quashing of a conviction. REGINA v. STEVENS, 3 Kerr, N. B. R. 356.

61. **Conviction** — VOID FOR UNCERTAINTY.]—A conviction adjudging the defendant to be imprisoned for twenty days, or pay 5 pounds sterling and costs, is bad. REGINA v. WORTMAN, 4 All. N. B. R. 73.

62. **Conviction** — VOID FOR UNCERTAINTY.]—A conviction under the 1 Rev. Stat. c. 133, s. 3, for fraudulently taking away lumber, describing it as "the property of another," is defective; it should state the name of the owner. EX PARTE HOLDER, 6 All. N. B. R. 338.

63. **Drunkenness.**]—A by-law of the city of Brantford enacted that any person found drunk on any of the public streets, &c., thereof, should be subject to the penalty thereby imposed, namely, to a fine not exceeding $50, inclusive of costs, and in default of payment forthwith of the fine and costs, distress, and in default of sufficient distress, imprisonment in the common gaol for a term not exceeding six months, &c., unless the fine and costs were sooner paid :—Held, that under s.-s. 19 of R. S. O. 1877 c. 184, s. 479, there was power to authorize imprisonment for the period mentioned. REGINA v. GRANT, 18 O. R. 169.

A conviction under the by-law directed in default of payment forthwith of the fine and costs and of sufficient distress, imprisonment for ten days in the common gaol unless the costs and charges including the costs of conveying to gaol, were sooner paid :—Held, that the conviction was bad as there was no power to include the costs of conveying to gaol. IB.

64. **Estoppel of Certiorari.**]—Held, 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, 46 U. C. R. 442.

65. **Exclusion of Evidence.**]—Under 32 & 33 Vict. c. 20, s. 25, (D.), as amended by 49 Vict. c. 51, s. 1, (D.), defendant was charged by his wife, before a magistrate, with refusing to provide necessary clothing and lodging for herself and children. At the close of the case for the prosecution, defendant was tendered as a witness on his own behalf. The magistrate refused to hear his evidence, not because he was the defendant, but because he did not wish to hear evidence for the defence; and subsequently without further evidence committed him for trial :—Held, that the defendant's evidence should have been taken for the defence; that a magistrate is bound to accept such evidence in cases of this kind, and give it such weight as he thinks proper, and that the exercise of his discretion to the contrary is open to review. Held, also, that the amended section of the Act is intended to enlarge the powers and duties of magistrates in cases of this nature, and that the word "prosecution" therein includes the proceedings before magistrates as well as before a higher court. REGINA v. MEYER, 11 P. R. 477.

66. **Forum.**]—Quære, whether a single Judge has power to hear a motion to quash a conviction. If he has power his decision is final, and not appealable. If he has no power, then his action is of no avail, and still unappealable. REGINA v. MCAULAY, 14 O. R. 643.

67. **Habeas Corpus** — CERTIORARI.]—A conviction by a magistrate under the sections of the Criminal Code relating to the summary trial of indictable offences may be brought up for review by writs of habeas corpus and certiorari. REGINA v. ST. CLAIR, 27 A. R. 308.

68. **Highway Regulations.**]—A by-law of a town provided that no one should use any waggon, &c., upon any of the streets of the town for drawing bricks, stones, &c., when the weight of the load should exceed 1500 pounds, unless the tires of the wheels were of a specified width, but the by-law was not to apply to any waggon conveying lumber or goods from the mill or manufactory thereof into the town if distant more than two miles from the town limits, nor to any person passing through the town with vehicles loaded with the said articles :—Held, bad, as discriminating against residents

of the town in favour of others. Held, also, that a conviction under such by-law was bad for not shewing that defendant was not a person passing through the town, and for imposing imprisonment with hard labour. REGINA v. PIPE, 1 O. R. 43.

69. **Information** — VARIANCE — CONVICTION.]—A variance between the information and the evidence in summary proceedings before justices of the peace is not fatal, since the Summary Convictions Act, 1 Rev. Stat. cap. 138; therefore, on an information for selling various kinds of spirituous liquors, a conviction for selling brandy only is sufficient. EX PARTE PARKS, 3 All. N. B. R. 237.

70. **Information** — VARIANCE — CONVICTION.]—It is no ground for quashing a conviction for selling spirituous liquor without license that the information on which it is founded, and the warrant issued thereon, state the offence to be selling "liquor" without license; or, selling contrary to the Acts of Assembly, when there is but one Act to regulate the sale; or, selling to divers persons unknown to the informant—provided the evidence proves a sale to a particular individual, and no objection was taken by defendant at the trial to the variance between the information and proof, and it does not appear that he was in any way misled by it. REGINA v. HARSHAM, 1 Pug. N. B. R. 317.

71. **Inquiry commenced by one and completed by two**—INVALID COMMITMENT.]—Where evidence on a preliminary inquiry is commenced before one Justice of the Peace and finished before two Justices, a commital by the two is irregular unless they have heard all the evidence. RE NUNN, 6 B. C. R. 464, 2 C. C. C. 429.

72. **Jurisdiction.**]—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 in term; the courts or divisions of the high court of justice mentioned in s.-s. 3 of s. 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 these courts or divisions that applications to quash convictions must be made, having regard to s. 87 and rule 484 of the O. J. Act, and of R. S. C. c. 174, s. 2, s.-s. 1, and s. 270. The 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 . Section 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 Queens bench division from his decision, refusing to quash such conviction, was treated as a substantive motion to quash the conviction. REGINA v. BEEMER, 15 O. R. 266.

73. **Jurisdiction of Full Court.**]—The jurisdiction of the full court to rehear motions to quash convictions has not been taken away by the Judicature Act, but still exists in the divisional courts. REGINA v. FEE, 13 O. R. 590.

74. **Jurisdiction.**]—The jurisdiction to hear motions for orders nisi in criminal matters vested in the common pleas division of the high court of justice for Ontario is the original jurisdiction of the court of common pleas prior to Confederation, and by virtue of s. 5 of C. S. U. C. c. 10, the court "may be holden by any one or more of the Judges thereof in the absence of the others." On a return or an order nisi to quash a conviction the court was composed of two of the Judges thereof, the third Judge being absent attending to other pressing judicial work :—Held, that the court was properly constituted to dispose of the order. REGINA v. RUNCHY, 18 O. R. 478.

75. **Jurisdiction.**] — Whether proceedings to quash a conviction under an Ontario Act should be taken before a single Judge, or a divisional court. REGINA v. WASON, 17 A. R. 221.

76. **Justice Adjudging Commitment** — PENALTY AND COSTS.]—A conviction under the Act 33 Vict. cap. 23, for selling liquor without license, is bad, if, in ad-

dition to costs of prosecution allowed by the Act, the justices adjudge the defendant in default of payment to be committed to gaol for a certain time, unless the penalty and costs, together with the costs of commitment and conveying him to gaol, be sooner paid. REGINA v. HARSHMAN, 1 Pug. N. B. R. 317.

77. **Limitation of Time.**]—Owing to a mistake in the Crown office, a rule to return the writ of certiorari, and afterwards a rule for an attachment, issued, although a return had in fact been filed. The conviction was quashed, but more than six months having thus expired since the conviction, the court was asked to allow process to issue against the justice for the illegal conviction as of a previous term, but the application was refused. Quære, whether the six months could be held to run only from the time of quashing the conviction. IN RE JOICE, 19 U. C. R. 197.

78. **Magistrate** — DESCRIPTION OF OFFICE.]—It is not ground for quashing a conviction that therein the magistrate has described himself as "police magistrate" and elsewhere as "stipendiary magistrate." In this Province there is no distinction. REGINA v. MCDONALD, 26 N. S. R. 94. REGINA v. HOARE, 26 N. S. R. 101.

79. **Market Regulations.**]—A conviction for violating a by-law was quashed, the by-law having been passed on the 27th of March, to go into force the 3rd April following, in anticipation of an Act, Vict. c. 24, (O.), passed the 10th March, to go into operation the 2nd April then next ensuing. Sub-section 2 of s. 8 of the Act subjects "such vendors of articles in respect of which a market fee may be now imposed as shall voluntarily use the market place for the purpose of selling such articles," to market fees, whereas the twelfth section of the by-law in question was "any person or persons who shall voluntarily come upon the said market place, &c., for the purpose of selling," &c. :—Held, that "vendors who shall voluntarily use the market-place for the purpose of selling" was not identical with or equivalent to "any person or persons who shall voluntarily come upon the said market-place for the purpose of selling" the same as "come upon the market-place for the purpose of selling"; nor was the expression "use the market-place for the purpose of selling" the same as "come upon the market-place for the purpose of selling"; and that the conviction was bad on this ground also. REGINA v. REED, 11 O. R. 242.

Held, that the conviction was bad, as differing from both statute and by-law, being for refusing to pay the fees on eight quarters of beef "exposed for sale," whereas s. 13 of the by-law applied only to cases of butcher's meat exposed for sale. IB.

80. **Necessity for Quashing Convictions.**]—A conviction, bad on the face of it, although not quashed :—Held, no defence to an action of trespass. BRIGGS v. SPILSBURY, Tay. 440.

81. A conviction not set aside protects a magistrate against an action of trespass. GATES v. DEVENISH, 6 U. C. R. 260.

82. **Necessity for Quashing Convictions.**]—Action against a magistrate for wrongful arrest and imprisonment, upon a conviction for selling spirituous liquors without license :—Held, that under C. S. U. C. c. 126, s. 3, trespass will not lie against a magistrate until the conviction complained of has been quashed; that the conviction never having been sealed, it was not necessary to have it quashed before action; that as only one wrong was complained of by plaintiff, he could not recover on the two separate counts in trespass and case, but must elect on which to enter his verdict. Semble, that he could not recover on the first count because the magistrate had jurisdiction, &c., and by the statute should be in case. HAACKE v. ADAMSON, 14 C. P. 201.

83. **Necessity for Quashing Conviction.**] —Held, following the last case, that an order of conviction not under seal need not be quashed before action brought for anything done under it. MCDONALD v. STUCKEY, 31 U. C. R. 577.

84. But a conviction made by one magistrate, in a matter in which jurisdiction was given to two only, must be quashed, though wholly void. GRAHAM v. MCARTHUR, 25 U. C. R. 478.

86. **Notice to Magistrate.**]—After the issue of a writ of certiorari for the removal of a conviction for the purpose of quashing

it, the writ, though served on the clerk of the peace, did not come to the notice or knowledge of the convicting magistrate, who enforced the conviction by the issue of a distress warrant :—Held, that the magistrate was not guilty of contempt. REGINA v. WOODYATT, 27 O. R. 113.

87. **Nuisance.**]—47 Vict. c. 32, s. 13, s.-s. 12 (O.), 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," &c. Section 2 of the by-law No. 179 of the city of London, passed under that Act, is as follows : "No person shall, in any of the streets or in the market-place of the city of London, blow any horn, ring any bell, beat any drum, play any flute, pipe, or other musical instrument, or shout or make, or assist in making, any unusual noise, or noise calculated to disturb the inhabitants of the said city Provided always that nothing herein contained shall prevent the playing of musical instruments by any military band of Her Majesty's regular army, or any branch thereof, or of any military corps lawfully organized under the laws of Canada." The prisoner was convicted under the by-law of beating a drum in a public street in the city of London :—Held, that 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. 395.

88. **Nuisance.**]—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, &c., 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. c. 32, s. 13, (O.), whereby power was given to pass by-laws (s.-s. 12), "for regulating or preventing the ringing of bells, blowing of horns, shouting, and other unusual 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 a drum," were not equivalent terms. REGINA v. MARTIN, 12 O. R. 800.

89. **Obstructing Highway.**]—Held, that the defendant appearing on the evidence returned to have bona fide asserted a claim to the land which he had enclosed, it was not a proper case for the adjudication of the mayor (of Belleville) under the 72nd or 185th clause of 12 Vict. c. 82; and that the summary conviction of defendant under that Act for obstructing a street, might be quashed by certiorari. REGINA v. TAYLOR, 8 U. C. R. 257.

90. **Obstructing Highway.**]—Conviction by a magistrate for obstructing a highway, and order to pay a continuing fine until the removal of such obstruction :—Held, bad. REGINA v. HUBER, 15 U. C. R. 589.

91. **Proof of Quashing of Conviction.**]—To prove the quashing of a conviction by the court of Queen's bench a rule of court was put in, in which the offence, the name of the complainant, and of the magistrate, were mentioned :—Held, sufficient, without further identifying the conviction mentioned in the rule with that on which the warrant issued, for the court would not presume another conviction similar in all these respects. BROSS v. HUBER, 15 U. C. R. 625.

92. **Proof of Quashing Conviction.**]—To prove the quashing of a conviction on to the appeal 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 C. S. U. C. c. 114, enables the court of quarter sessions to dispose of the conviction by order. NEILL v. MC-MILLAN, 25 U. C. R. 485.

93. **Public Health Act** — REFUSAL TO HEAR EVIDENCE.]—The defendant was convicted in July, 1874, under the Public Health Act, 36 Vict. c. 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 one 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 s. 35, of the Act. RE HOLLAND, 37 U. C. R. 214.

94. **Public Health Act.**]—A conviction for carrying on a noxious and offensive trade contrary to R. S. O. 1877 c. 205, the Public Health Act, imposed in default of sufficient distress to satisfy the fine and costs, imprisonment in the common gaol for fourteen days, unless the fine and costs, including the costs of commitment and conveying to goal be sooner paid :—Held, following Regina v. Wright, 14 O. R. 668, that the imposition of the costs of commitment and conveying to gaol was unauthorized, and that s. 1 of R. S. O. 1887 c. 74, not referred to in that case, did not affect the question. REGINA v. ROWLIN, 19 O. R. 199.

95. **Sale of Hay.**]—A by-law required "all hay, &c., sold at the market or elsewhere in the town of Cornwall, which is required to be weighed by the vendor or purchaser, to be weighed with public weigh-scales," &c. A conviction under this by-law was, that defendant in contravention of said by-law brought hay into said town, and had same weighed on scales other than the public scales :—Held, that the conviction was bad in not stating that the hay was sold in the market or elsewhere in said town, and must be quashed; and with costs to be paid by complainant, the weigh-master, who had instituted the proceedings for his own benefit, after warning instead of bringing an action in the division court. REGINA v. HOLLISTER, 8 O. R. 750.

96. **Selling Liquor Contrary to Regulations** — CONVICTION BEFORE ONE JUSTICE — EVIDENCE.]—A regulation of the general sessions of the city and county of St. John, made in September, 1856, required every tavern keeper to put up, etc., over his door a sign-board with his name at full length, and the words "Licensed Tavern," legibly painted thereon, under a penalty of forty shillings. This regulation was made under the authority of the Act 17 Vict. cap. 15, s. 7, which directed that the penalties should be recovered before two justices of the peace. McG. was tried before one justice, and convicted under this regulation "for selling liquor without a sign-board." The conviction did not show that McG. was a licensed tavern-keeper :—Held, that the conviction was bad for two reasons : 1. Because one justice had no jurisdiction to try the offence; and 2. Because the conviction did not state that McG. was a licensed tavern-keeper, to whom only the regulation applied. MC-GILVERY v. GAULT, 1 P. & B. N. B. R. 641.

97. **Selling Liquor Without License** — STATEMENT OF TIME — SECOND OFFENCE — EVIDENCE.]—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 first day of August," is sufficient, and it is not necessary to have fixed the exact day of sale. Where a party is sought to be convicted under the Act 36 Vict. cap. 10, s. 11, (Consol. Stat. cap. 105), of selling liquor without a 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. REGINA v. JUSTICES OF QUEEN'S, 2 Pug. N. B. R. 485.

98. **Summary Conviction** — CHARGING MORE THAN ONE OFFENCE.]—Where the information charged more than one offence, and after counsel for the defendant had objected, the magistrate overruled his objections and proceeded to hear evidence on all the charges instead of amending the information by striking

out all but one of them :—Held, conviction void. Rex v. Austin, 10 C. C. C. 34, 1 W. L. R. 571.

99. **Summons Issued by Two Justices — Tried by One of These and a Third Justice — Conviction Bad.**]—Where a summons for selling liquor contrary to law was issued by two justices of the peace, and the cause tried before one of them and a justice who had not signed the summons :—Held, that the conviction must be set aside. Weeks v. Bonham, 2 R., & C., N. S. R. 377.

100. **Trespass.**]—Where the defendants had been convicted, under 32 & 33 Vict. c. 22, s. 60, (D.), of trespass to land, and it appeared on the evidence before the magistrate, set out in the report of this case, 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 defendant 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, 45 U. C. R. 91.

101. **Trespass.**]—Section 283 of the Railway Act of Canada, 51 Vict. c. 29, enabling a justice of the peace for any county to deal with cases of persons found trespassing upon railway tracks, applies only where the constable arrests an offender and takes him before the justice. A summary conviction of the defendant by a justice for the county of York, for walking upon a railway track in the city of Toronto, was quashed where the defendant was not arrested, but merely summoned. Regina v. Hughes, 26 O. R. 486.

102. **Trespass.**]—The defendants were convicted of a trespass under C. S. U. C. c. 105 as amended by 25 Vict. c. 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, 2 O. R. 511.

103. **Unsworn Information — Successive Trespasses — Pleading.**]—Defendant, a justice, on the 5th of May 1869, issued his warrant against the plaintiff on an alleged charge of stealing a lease, without any information being laid, upon which warrant the plaintiff was arrested and brought before him :—Held, that defendant was liable in trespass, as without information on oath he had no jurisdiction over the person of plaintiff. Defendant, on 11th May caused plaintiff to be brought before him a second time on said warrant, when there was no prosecutor, no examination of witnesses, and no confession, and committed plaintiff for trial :—Held, following Connors v. Darling, 23 U. C. R. 541, that it was a new act of trespass, for which a second count was well laid in the declaration. At the sessions defendant appeared as prosecutor, when plaintiff was tried and acquitted. Held, that a count for malicious prosecution could be added to this. Held, also, that a warrant, though good on its face, will not protect a justice under C. S. U. C. c. 126, s. 2, unless issued upon a proper information. Appleton v. Lepper, 20 C. P. 138.

V. Civil Causes.

1. **Administering Oath.**]—In an action for slander for stating that the plaintiff had sworn falsely, it appeared that the proceedings in which the alleged false swearing was done were before two justices, on an information for unlawfully killing cattle :—Held, that this being a mere trespass, the parties had no jurisdiction to administer an oath, and that the plaintiff should be non-suited. Ganong v. Fawcett, 2 Pug. N. B. R. 129.

2. **Affidavit for Attachment — Before Whom to be Made.**]—Where the affidavit on which an attachment was grounded was made before a justice of the peace, and it appeared that a commissioner for the county was, at the time, at his usual residence, and within three miles of the

place where the affidavit was made, the proceedings were set aside. KNODEL v. BEST, 2 Thom. N. S. R. 149.

3. **Assault** — UNPROVED OR TRIFLING — APPEAL.]—Plaintiff instituted an action under section 23, cap. 147, 3rd Revised Statutes, before two justices of the peace against defendant for an assault, and the justices on hearing the evidence, dismissed his complaint, either deeming the offence not proved, or so trifling as not to merit punishment. Plaintiff thereupon appealed to the Supreme Court, and the Judge presiding at Annapolis dismissed his appeal, but gave him a rule nisi to bring the case for argument before the full court :—Held, that in a case of this nature, plaintiff was not entitled to appeal from the decision of the justices of the peace. Construction of section 8 of chap. 1, 3rd Rev. Stats. CHESTEY v. GRASSIE, 1 N. S. D. 191.

4. **Civil Court** — JUSTICE SUBPOENAED AS WITNESS AFTER ISSUING SUMMONS — TRIAL BY ANOTHER JUSTICE — BY WHOM JUDGMENT IS TO BE SIGNED AND EXECUTION ISSUED — CONSOL. STAT., CAP. 51, S. 7 — ACT 45 VICT. CAP. 9 — JURISDICTION OF COUNTY COURT TO TRY ACTION AGAINST JUSTICE.]—Where a justice, after issuing summons in a civil suit, is subpoenaed as a witness, and another justice tries the cause under Consol. Stat., cap. 60, s. 30, the latter must sign the judgment and issue execution. By the Act 45 Vict. cap. 9, the county court has jurisdiction to try actions against justices of the peace for acts done in the execution of their office. KNOX v. NOBLE, 28 N. B. R. 34.

5. **Conviction** — IRREGULARITIES IN.]—In an action for breach of the License Laws, where the plaintiff is described in the writ as clerk of the county of Colchester, and he is only clerk of one of the districts therein, and where the process was served by a person not a sworn constable, and the conviction did not follow the exact words of the statute :—Held, not sufficient irregularity to quash the proceedings. MCCULLY v. MCKAY, Cochran's, N. S. R. 82.

6. **Jurisdiction in Civil Cause** — TRESPASS TO LAND — TITLE IN QUESTION.]—If in an action of trespass to land, tried before a justice of the peace, the defendant sets up title and offers a deed in evidence, and the plaintiff also gives evidence of deeds, and of a title arising by estoppel, on which the justice undertakes to decide, the title in question is bona fide, and the justice has no jurisdiction. REGINA v. HARSHMAN, 1 Pug., N. B. R. 346.

7. **Jurisdiction in Civil Cause.**]—The court is very reluctant to disturb a justices' judgment on a strict rule of law, where the substantial justice of the case is in favor of the verdict. JORDAN v. COATES, 2 All., N. B. R. 107.

8. **Jurisdiction in Civil Cause** — COMMISSION.]—A new commission of the peace, in which the name of one of the former justices is omitted, does not determine his authority until he has express or implied notice of the new commission. TURNER v. DOYLE, Trin. T. 1833 (N. B. R.)

9. **Jurisdiction in Civil Cause** — GRANTING NEW TRIAL.]—A justice of the peace has no power to grant a new trial in an action tried before him under the Act 50 Geo. III. cap. 17. ROSE v. MARSH, Trin. T. 1827 (N. B. R.).

10. **Jurisdiction in Civil Cause** — NEAREST JUSTICE — MEANING.]—An Act directed that the damages caused by an alteration of a road should be assessed by five freeholders, to be appointed by "the nearest justice of the peace" :—Held, that this necessarily meant the nearest disinterested justice. REX v. HEAVISIDE, Hil. T. 1833 (N. B. R.).

11. **Jurisdiction in Civil Cause** — PROCEEDINGS IN MAGISTRATE'S COURT.]—An objection, that a defendant was a commissioner for laying out public money, and as such contracted with the plaintiff, cannot be set upon review of the justice's judgment, where it was not made at the trial before the justices. The proceedings in magistrates' courts are regulated by the same general rules as in other courts. CORMIER v. TIBIDEAU, 1 Kerr's, N. B. R. 297.

12. **Jurisdiction in Civil Cause** — PROCEEDING WITH TRIAL — DIFFERENT JUSTICE.]—Where a justice of the peace commences the trial of a civil suit, but is unable to proceed because he is required as a witness, and another justice is called upon to try the cause under 1 Rev. Stat.

cap. 137, s. 28, he must continue the proceedings to the end of the suit; the first justice has no further jurisdiction. SUMMER v. MONAGLE, 6 All., N. B. R. 203.

13. **Jurisdiction in Civil Cause** — REPLEVIN.]—A justice of the peace may grant replevin for cattle impounded, for breach of regulations of justices in sessions made under the Act 13 Vict. cap. 30, it being in the nature of a distress damage feasant. See STERLING v. JONES, 2 All., N. B. R. 522.

A justice has jurisdiction, though the value of the cattle impounded exceeds 5 pounds sterling, if the amount required to obtain their release does not exceed that sum. IBID.

14. **Jurisdiction in Civil Cause** — PARISH COURT — JURISDICTION MUST APPEAR ON FACE OF PROCEEDINGS — RESIDENCE OF PLAINTIFF OR DEFENDANT — PLACE.]—In an action in a parish civil court, it should appear on the face of the proceedings, either by evidence or by the admission of the parties, that the case is within the limits of the commissioner's jurisdiction. And in an application for review, where it did not appear from the proceedings that the plaintiff or defendant resided or the cause of action arose within the parish for which the commissioner was appointed, it was held, by Allen, C. J., and Weldon and Duff, J. J., that the judgment should be set aside, and also that the facts necessary to give jurisdiction could not be shown by affidavit. CORBET v. MCCRACKEN, 2 P. & B., N. B. R. 157.

15. **Jurisdiction in Civil Cause** — REVIEW FROM JUSTICE'S COURT.]—In the case of a review from a justice's court, it is not a sufficient ground for reversing the judgment that the evidence to support the verdict is slight, and contradicted by that on the other side, if the whole case be such as the justice was warranted in submitting to the jury for their decision. LEE v. BREEN, 2 Kerr's, N. B. R. 323.

16. **Jurisdiction in Civil Cause** — REVIEW FROM JUSTICE'S COURT.]—On a review from a justice's court, the defendant, against whom judgment had been rendered, did not deny his liability, but contended that he was jointly liable with another person, and that although the action had been commenced against both, judgments had been received against him alone. It appeared on the justice's return that he was the only defendant who had been served wtih summons and appeared, and that the judgment had been so entered at his request, the court affirmed the judgment. The court refused to receive affidavits to falsify the return. BUCKSTAFF v. DOTEN, 2 Kerr's, N. B. R. 366.

17. **Jurisdiction in Civil Cause** — REVIEW OF JUDGMENT.]—On review of the judgment illegally rendered for the defendant in a justice's court, the same may not only be reversed, but judgment will be awarded for the plaintiff for the amount sought to be recovered, where the right is clear and the facts undisputed. WATSON v. MARKS, 2 Kerr's, N. B. R. 694.

18. **Jurisdiction in Civil Cause** — WAIVING BALANCE.]—A justice of the peace has no jurisdiction, under the Act 4 Wm. IV. cap. 45, in cases of debt where the amount exceeds 5 pounds sterling, unless reduced to that sum by actual payments. A creditor has not the power of bringing such a debt within the jurisdiction of a justice by waiving the balance of his claim, so as to bring the demand within the sum to which the justice's courts are limited. WHITE v. MACKLIN, 1 Kerr's, N. B. R. 94.

19. **Jurisdiction in Civil Cause** — TRESPASS TO LAND — TITLE IN QUESTION.]—A justice of the peace has no jurisdiction, under the Act 56, Geo. III. cap. 17, to try an action where the title of land comes in question, and if the defendant in an action of trespass justifies entering on the land, as being a highway, the jurisdiction of the justice is ousted. COLWELL v. PURDY, Trin. T., N. B. R. 1831.

20. **Justice's Court** — JURY FAILING TO AGREE.]—Plaintiff sued in the county court, as indorsee of a promissory note. He had theretofore sought to recover before justices of the peace and a jury, when the jury failing to agree on ‿ verdict, the justices had discharged them, and made an order as to payment of costs, but rendered no decision in the action :—Held, that under c. 102, R. S., the justices had no authority to dismiss the jury without their having rendered

some verdict, nor to summon another. Having done so the trial was abortive, and plaintiff might bring a fresh action, if he chose, before other justices. That the matter was not to be considered res judicata because of the judgment the justices had thought proper to sign, as it did not finally settle the matter at issue. CREELMAN v. STEWART, 28 N. S. R. 185.

21. **No Formal Conviction** — TRESPASS TO LANDS — COSTS AGAINST MAGISTRATE. —On motion to quash a conviction made by a justice of the peace on a charge of trespass to lands :—Held, that no formal conviction having been returned was no bar to the quashing of the conviction or minute of adjudication, and under the Ontario Judicature Act costs may be awarded against the magistrate and prosecutor upon such motion. REX v. MANCION, 8 C. C. C. 218, 8 O. L. R. 24.

22. **Proving Conviction.**]—Semble, that a conviction returned under the statute to the quarter sessions and filed by the clerk of the peace, becomes a record of the court, and may be proved by a certificate copy. GRAHAM v. MCARTHUR, 25 U. C. R. 478.

23. **Refusing to Pay Seaman's Wages or Grant his Discharge** — NOT CRIMINAL OFFENCES — JURISDICTION.]—Refusal to pay a seaman his wages or to give him his discharge are not criminal offences, and under the Seamen's Act of Canada, ch. 74, R. S., there is no authority given to magistrates to summarily convict the master of a British ship, of such offence, even if at the time the complaint is laid, the ship is within Canadian jurisdiction and of Canadian register. REX v. MEIKLE, 7 C. C. C. 369, 36 N. S. R. 297.

24. **Stipendiary Magistrate** — SEAMEN'S WAGES — JURISDICTION IN ACTIONS FOR — WHAT NECESSARY TO SHOW TO GIVE JURISDICTION.]—Plaintiff contracted with one Feltmate, who professed to be the owner of a vessel, to sail her as master at a stipulated rate of wages. After the lapse of six months Feltmate who up to that time had been on board, left the ship, and plaintiff discovered he was not the owner, the possession of the ship having been demanded by the defendant the real owner. Plaintiff then sued defendant for wages as master before the stipendiary magistrate under the Canadian Statute of 1873, cap. 129, secs. 52 and 59, which enable a master to sue for wages due him, not exceeding $200 :—Held, that the stipendiary had no jurisdiction, and that the judgment could be reviewed on certiorari. McDonald, C. J., and Rigby, J., dissenting. Per Weatherbe, J., that the case came within the principles as to a jurisdiction given to try cases between persons of a specified class or classes, and the magistrate had no evidence of either of the two classes suing and being sued respectively in this case HAWES v. HART, 6 R. & G. N. S. R. 42, 6 C. L. T. 140.

25. **Summons** — DIRECTION OF — JURISDICTION OF STIPENDIARY MAGISTRATE CONCURRENT.]—The directing of a writ in a suit before a stipendiary magistrate for seamen's wages, to any of the constables of the county instead of the sheriff or to his deputy, is not a nullity but a mere irregularity, which is waived by appearance. The jurisdiction of the stipendiary magistrate under 3rd Revised Statutes, c. 75, is concurrent only with that of two justices of the peace and not exclusive. In this case the writ was signed by and made returnable before the stipendiary magistrate, but two justices of the peace were substituted for him on the trial by the request of the defendant :—Held, that the irregularity, if any, was cured by the assent of the defendant. Construction of 3rd Revised Statutes, cap. 75, sec. 25, and of Provincial Acts of 1865, cap. 1, sec. 13. ANDERSON v. MASON, 1 N. S. D. 1, 2 Old. N. S. R. 369.

26. **Trespass to Lands** — BONA FIDE DISPUTE.]—Where, in a proceeding before two justices under 1 Rev. Stat. cap. 133, for wilfully cutting and carrying away timber off complainant's land, there is shown to be a bona fide question to title or boundaries, and the act was done under a bona fide claim of right, the wilfulness of the act is negatived, and defendant should be discharged. EX PARTE DONOVAN, 2 Pug., N.B.R. 389.

27. **Whether Directing Illegal Act.**]—Defendant constable had illegally levied on plaintiff's waggon, in the possession of a judgment debtor, but had not removed it. The judgment debtor desiring that it should be removed, the defendant

constable consulted the defendant magistrate, who had issued the execution, who said, "Well, if he wants the waggon, go and bring it in" :—Held, that the words did not amount to a direction to the constable sufficient to render the magistrate liable, but were mere friendly advice. Per Meagher, J., unless the magistrate knew that there was doubt as to the ownership of the waggon. O'Handley v. Dooley, 31 N. S. R. 121.

VI. Costs.

1. **Costs.**]—Costs cannot be given on a conviction for a penalty for a breach of a by-law of the city of Fredericton. The word "costs" in the 81st section means the costs of distress and sale. Ex Parte Mowry, 3 All., N. B. R. 276.

2. **Costs.**]—If the prosecutor appears at the trial of a complaint and the justice, after hearing, dismisses it, he has no power to award costs against the prosecutor under the Summary Convictions Act, 1 Rev. Stat. c. 138, s. 11. Ex Parte Beattie, 5 All., N. B. R. 377.

3. **Costs.**]—Justice's Summary Convictions Act, 12 Vict. c. 31, gives no general powers to award costs on convictions. Ex Parte Clifford, 3 All., N. B. R. 16.

4. **Costs.**]—Where justices have power to award costs on a summary conviction, they must specify the amount. Ex Parte Hartt, 3 All., N. B. R. 122.

5. **Costs.**]—Costs not allowed on quashing conviction. Regina v. Stevens, Kerr's, N. B. R. 356.

6. **Costs Improperly Imposed.**]—There, is no general power to award costs upon a conviction under an Ontario statute where such power is not given by the statute itself; and therefore where on a conviction under s. 162, c. 174, R. S. O. 1877, for attempting to obtain information at the polling place as to the candidate for whom a voter was about to vote, costs were awarded against defendant, the conviction was ordered to be quashed : —Held, also, that there was no power to amend the conviction in this respect. Regina v. Lennon, 44 U. C. R. 456.

7. **Costs of Motion.**]—Convictions quashed with costs to be paid by the prosecutor. Regina v. Hazen, 23 O. R. 387.

8. The practice is not to give costs on quashing a conviction. Regina v. Johnston, 38 U. C. R. 549. Regina v. Somers, 24 O. R. 244.

9. Costs against the informant refused. Regina v. Somers, 24 O. R. 244. Regina v. Coulson, 24 O. R. 246.

10. Costs of quashing conviction withheld from successful defendant, where he filed no affidavit denying his guilt, or casting doubt upon the correctness of the magistrate's conclusion upon the facts. Regina v. Steele, 26 O. R. 540.

11. It is not the practice to give costs in quashing a conviction. Regina v. Johnston, 38 U. C. R. 549.

12. Quære, whether the defendant should not get the costs of quashing a conviction made to test the law. Regina v. Jamieson, 7 O. R. 149.

13. Where a weigh-master instituted a prosecution for his own benefit, after warning, instead of bringing an action in the division court, and the conviction was quashed, he was ordered to pay the costs. Regina v. Hollister, 8 O. R. 750.

14. A conviction was quashed without costs where it appeared that the defendant had attempted to tamper with the informant. Regina v. Ryan, 10 O. R. 254.

15. As it appeared that in this case the search warrant had been issued, and the defendant's premises searched, for the mere purpose of possibly securing evidence upon which to bring a prosecution, the justices of the peace and the informant were ordered to pay the defendant's costs. Regina v. Walker, 13 O. R. 83.

16. Costs of the application to quash a conviction will be adjudged against a private prosecutor where he lays an information without having reasonable ground for believing that the charge will be sustained by proper evidence. Regina v. Kennedy, 10 O. R. 396.

17. The order to quash the conviction was made without costs because the defendant had taken so many exceptions to the conviction upon which he had failed, and because the merits of the complaint were against him. REGINA v. LYNCH, 12 O. R. 372.

18. Conviction quashed with cost against the informant, where he had a pecuniary interest in the prosecution. REGINA v. STEWART, 17 O. R. 4.

19. Remarks on the question of costs in quashing convictions. REGINA v. WESTLAKE, 21 O. R. 619.

20. The court in considering the question of costs suggested that in future with the notice of motion for a certiorari, a notice might also be served stating that unless the prosecution was then abandoned, and further proceedings rendered unnecessary, costs, would be asked for, when a strong case would be made for granting the defendant costs in cases in which it would be unjust and unfair to put defendant to such costs. REGINA v. WESTGATE, 21 O. R. 621.

21. **Costs** — POWER TO AWARD — INFORMATION DISMISSED.]—A justice of the peace has power to grant costs on dismissing an information heard before him under the Summary Convictions Act, Consol. Stat. c. 62, s. 16. EX PARTE ROSS, 2 P. & B., N. B. R. 337.

22. **Magistrate** — DEMAND OF FEES — INDICTABLE OFFENCE.]—A magistrate cannot properly demand fees when the proceedings cannot be dealt with summarily. REX v. MEEHAN, (No. 2), 5 C. C. C. 312, 3 O. L. R. 361.

VII. DISMISSAL OF PROCEEDINGS.

1. **Appeal from Dismissal of Complaint.**] —Held, that a prosecutor of a complaint cannot appeal from the order of a magistrate dismissing the complaint, as by R. S. O. 1877 c. 74, s. 4, the practice of appealing in such a case is assimilated to that under 33 Vict. c. 47 (D.), which confines the right of appeal to defendant. A prohibition was therefore ordered, but without costs as the objection to the jurisdiction had not been taken in the court below. IN RE MURPHY AND CORNISH, 8 P. R. 420.

2. **Certificate of Dismissal** — WHERE INFORMANT DOES NOT APPEAR — RIGHT TO GRANT — SUBSEQUENT COMPLAINT FOR SAME OFFENCE — WHETHER BONA FIDE OF JUSTICE IN GRANTING CERTIFICATE CAN BE INQUIRED INTO — CANADA TEMPERANCE ACT, 1878.]—Held, by Allen, C. J., Weldon, Wetmore, King and Fraser, JJ., that 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 complainant is dismissed on that ground, as where he does appear and the information is dismissed on the merits. By Palmer, J., that such certificate can only be granted where the information is dismissed after hearing. Held, also, (Weldon and Wetmore, JJ., dissenting), that the magistrate or other officers 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 enquire whether the previous prosecution was real and bona fide, or was instituted fraudulently and collusively. EX PARTE PHILLIPS, 24 N. B. R. 119.

3. **Record in Police Court** — WHAT SUFFICIENT.]—Held, that the following record of the police court was sufficient evidence of the termination of the proceedings: "J. J. Backstrom, charge, stealing two rings (pros. J. Beck); discharged." BACKSTROM v. BECK, 5 R. & G. N. S. R. 538.

VIII. JURISDICTION.

1. **Action to Recover Fine and Costs.**]— In an action for the recovery from the defendant, a justice of the peace, of the fine and costs paid to the defendant by the plaintiff upon a summary conviction made by the defendant under an Ordinance of the North-West Territories, which conviction had been quashed, it was held that the action did not lie against the magistrate, since, under s. 11 of the Ordinance respecting justices of

the peace, Con. Ord. (1898) c. 32, he was bound to transmit the fine to the Attorney-General forthwith upon its receipt by him, and, in the absence of evidence that he had not remitted, must be presumed to have done so, and the costs were, by the conviction, directed to be paid to the complainant, whose agent to receive them the plaintiff must have known the defendant to be. KAULITSKI v. TELFORD, 24 Occ. N. 108.

2. **Adjourning Proceedings** — POWER.]—One justice of the peace has power at the return day of the summons to adjourn the proceedings till a future day, under the Summary Convictions Act (1 Rev. Stat. cap. 138, s. 21), though jurisdiction to hear the case is given to two justices. EX PARTE HOLDER, 6 All., N. B. R. 338.

3. **Aldermen.**]—Quære, have the aldermen of a city as ex officio justices of the peace, any jurisdiction beyond the city limits. REGINA EX REL. BLASDELL V. ROCHESTER, 7 L. J. 102.

4. **Aldermen** — OATH.]—Under the Municipal Act of 1866, as amended by 31 Vict. c. 30 (O.), an alderman is not ex officio authorized to act as a justice of the peace until he has taken the oath of qualification as such. REGINA v. BOYLE, 4 P. R. 256.

5. **Amended Information** — RE-SWEARING — WAIVER — RECORD OF CONVICTION — SEC. 889.]—The magistrate in the presence of the defendant and prosecutor amended the information which was laid under the Master and Servants' Act, Ontario, 1901, but the information was not re-sworn. The amended information was then read over to the defendant and he was informed that he would be tried on the amended information. He made no application for adjournment or raised any objection to the proceeding :—Held, that under the circumstances, the magistrate having the defendant before him, even though brought there improperly, may proceed to try him on the amended information though not re-sworn, even though the Act under which he is tried requires information on oath, provided the defendant does not protest. Held, further, that being satisfied from a perusal of the depositions, that an offence of the nature described in the conviction has been committed by the defendant, and the magistrate had jurisdiction over it, and the punishment imposed is not in excess of the law, the court will not invalidate the conviction by reason of the fact that the date and place of offence is not stated in it; where these clearly appear on the depositions the conviction may be amended under secs. 883 and 889. REX v. HAWES, 6 C. C. C. 499.

6. **Appeal from Conviction Before** — AFFIDAVIT REQUIRED BY N. W. T. ORDINANCE.]—There is no right of appeal from a conviction under the Liquor License Ordinance unless the appellant made the affidavit required by the N. W. T. Ordinance within the prescribed time. An omission to do so renders the jurisdiction of the court to hear the appeal a nullity, and such omission cannot be waived. KAVANAGH v. MCILMOYLE, 6 C. C. C. 88, 5 Ter. L. R. 235.

7. **Arrest on English Warrant.**]—The prisoner was arrested in Toronto, upon information contained in a telegram from England, charging him with having committed a felony in that country, and stating that a warrant had been issued there for his arrest :—Held, that a person cannot under the Imperial Act, 6 & 7 Vict. c. 34, legally be arrested or detained here for an offence committed out of Canada, unless upon a warrant issued where the offence was committed, and indorsed by a Judge of a superior court in this country. Such warrant must disclose a felony according to the law of this country, and semble, that the expression "felony, to wit larceny," is insufficient. The prisoner was therefore discharged. REGINA v. MCHOLME, 8 P. R. 452.

8. **Arrest Without Summons.**]—Under 1 Vict. c. 21, s. 27, a magistrate cannot cause the arrest of a party in the first instance; he must first be summoned before him. CRONKHITE v. SOMMERVILLE 3 U. C. R. 129.

9. **Apprehension of Lunatic** — JOINT ACTING.]—Before two justices can issue a warrant for the apprehenison of a person charged with being a dangerous lunatic under the 1 Rev. Stat. cap. 89 (Consol. Stat. cap. 22), the evidence required by the statute must be given

before them, both acting together, and it is not sufficient that an affidavit be made before one and shown to the other. McGuirk v. Richard, 2 Pug., N. B. R. 240.

10. **Assault** — Variance of Warrant and Conviction from Minute of Adjudication — Summary Trial.]—Upon a summary trial by consent of a conviction for common assault, before a stipendiary magistrate, the sentence imposed differed from the minute of adjudication in which no mention was made of hard labor :—Held, such a variance is fatal, and defendant discharged. Ex Parte Carmichael, 8 C. C. C. 19.

11. **Assault** — Lesser Offence — Summary Trial — Limit of Punishment.]—By sec. 265 of the Code common assault is an indictable offence. A stipendiary magistrate summarily trying an accused, by his consent, for inflicting grievous bodily harm, may convict him of the lesser offence of common assault, and impose the punishment provided by sec. 265 for a conviction upon an indictment. Rex v. James Coolen, 7 C. C. C. 522, 36 N. S. R. 510.

12. **Assault** — Jurisdiction to Reduce Charge.]—A justice of the peace has no jurisdiction, of his own motion, to reduce a charge of assault with intent to do grievous bodily harm, to one of common assault, in order to allow himself to proceed to dispose of it summarily. A certificate of dismissal in such case is no bar to a civil action. Miller v. Lees 2 C. C. C. 282, 25 A. R. 428.

13. **Assault** — Prayer to Proceed Summarily — Service of Copy of Minute of Conviction — Justification to Constable Arresting — Distinction Between Order and Conviction.]—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 & 33 Vict. c. 20, s. 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 show whether such request was made or not, but it was proved that the complainant was present at the return of the summons, and gave evidence against the defendant, if any intendment could be made, it might be presumed complainant had made such request. 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 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. Quære, whether it is necessary to state in the warrant and conviction that the complainant had requested the magistrate to proceed summarily. Where the form given by the schedule of the Act has been pursued, and the offence is one over which the magistrate had jurisdiction, if requested to proceed, and he has proceeded and convicted on the evidence, and in the presence of the prosecutor, the court was inclined to sustain the conviction and warrant. The warrant reciting the conviction, and being good on its face, under such circumstances, was a sufficient justification to the constable. A conviction for an unlawful assault may adjudge defendant to be imprisoned in the first instance, under section 43 of the 32 & 33 Vict. c. 20. It is not necessary, before a defendant, convicted of an assault, is imprisoned, that he should be served with a copy of the minute of conviction. The 52nd section of the Act 32 & 33 Vict. c. 31, which might require this to be done before a warrant of commitment could issue, applies to orders made by justices, and not to convictions. A party duly convicted of an offence is bound to take notice of the conviction at his peril. Regina v. O'Leary, 3 Pug. N. B. R. 264.

14. **Assault.**]—At common law magistrates have no summary jurisdiction to try complaints for assaults. The jurisdiction is derived solely from C. S. C. c. 91, and can only be exercised where prayed under that statute. In re Switzer, 9 L. J. 266.

15. **Assault.**]—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 s. 8 of the Summary Trials Act, R. S. C. c. 176, by asking defendant whether he consented to be tried before him or desired a jury, proceeded to try and convict the defendant on the charge of the felonious assault :—Held, that the defendant was entitled to be informed of his right to trial by 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, 24 O. R. 60.

16. **Assault.**]—The defendant was convicted of a common assault, upon the complaint of the prosecutor, who orally requested the magistrate to proceed summarily :—Held, that the request to proceed summarily need not be in writing. REGINA v. SMITH, 46 U. C. R. 442.

17. **Associate Justices** — REQUEST.]—Where a party charged comes or is brought before a magistrate in obedience to a summons or warrant, no other magistrate can interfere in the investigation of or adjudication upon the charge, except at his request. REGINA v. MCRAE, 28 O. R. 569.

18. **Both Magistrates Present.**]—As to a matter within the jurisdiction of two justices, both should be present when the information is laid and the summons granted, but only one need sign the information, and the conviction should show on its face the facts necessary to give jurisdiction to the one not signing. REGINA v. MCKENZIE, 23 N. S. R. 6. REGINA v. BROWN, 23 N. S. R. 21. REGINA v. ETTINGER, 32 N. S. R. 176.

19. **Certiorari** — COSTS.]—On a motion for an order to quash a conviction made by a justice of the peace in a criminal cause :—Held, that conviction must be quashed. The court has no jurisdiction to give costs against the prosecutor or against the magistrate in certiorari proceedings of a criminal cause. In cases where costs have been given against an unsuccessful applicant for certiorari proceedings, the court has such power either because of the recognizance defendant has entered into to pay costs, or as a punishment for erroneously putting the jurisdiction of the court in motion. REX v. BENNETT, 5 C. C. C. 459, 4 O. L. R. 205.

20. **Certiorari** — COSTS OF CONVEYING TO GAOL.]—The Superior Court has jurisdiction to take cognizance, upon certionari, of every decision rendered by a justice of the peace, even in criminal matters. 2. A recorder has no right, in imposing a fine and the costs of a prosecution, and imprisonment in case of nonpayment, to require as a condition precedent to the liberation of the defendant, the payment of the costs of prosecution and conveying to gaol; and a conviction containing that provision will be quashed upon certiorari. LEONARD v. PELLETIER, Q. R. 24 S. C. 331, 6 Q. P. R. 54.

21. **City and County.**]—By R. S. O. 1877 c. 3, certain cities, including Kingston, form, for judicial purposes, part of the respective counties in which they are situate, and by c. 72, s. 6, no other justice of the peace shall act in any case for any city having a police magistrate. The conviction in this case was signed by two justices of the county of Frontenac. The case was heard in the county and the conviction stated that it was signed there, but it appeared that one of the justices signed it in the city. In replevin for plaintiff's goods sold under a distress warrant issued upon such conviction :—Held, that the plaintiff could not recover : 1, for the justices had not acted for the city within c. 72; and 2, the conviction, which could not be questioned in this action, stated that it was signed within the county. Quære, whether the signing of the conviction was a judicial or ministerial act, and therefore whether the place where it was done was material. LANGWITH v. DAWSON, 30 C. P. 375.

22. **Civil Cause** — MONEY DEMAND — REVIEW FROM JUSTICE'S COURT.]—Where the particulars of the plaintiff's demand in a magistrate's court were 3d. over 5 pounds sterling, though the amount stated in the summons was for 5 pounds sterling, and the demand proved, which had not been reduced by actual payment, was less than 5 pounds sterling, and the verdict for 2s. 9d. : — Held, that the magistrate had no jurisdiction. DRAPER v. MUNROE, 3 Kerr's, N. B. R. 438.

23. **Civil Cause** — Trespass to Land — Title in Question.]—A justice of the peace has no jurisdiction to try an action of trespass to land under the Act 4 Wm. IV. cap. 45, where the defendant claims an interest in, or right to the use of the land; as where the question was whether there was a public highway over the land. Sloan v. Davis, 2 All., N. B. R. 593.

24. **Clerk of Licenses** — Right to Compensation Under 4th R. S., c. 75, s. 28, for Costs — No Right to, Where Justices no Jurisdiction.]—Plaintiff, as clerk of License for one of the districts of the county of Cumberland, brought an action before two magistrates to recover a penalty for the illegal sale of intoxicating liquors. The magistrates rendered a decision in plaintiff's favor which was quashed in the Supreme Court, where it was brought by certiorari, for want of jurisdiction, on the ground that one of the magistrates was related to plaintiff. The Municipal Council having refused to allow plaintiff his costs, application was made under cap. 75, Revised Statutes, 4th Series, sec. 28, to amerce the county :—Held, that there being no jurisdiction in the justice to issue process or try the cause, plaintiff had acquired no right under the statute to be compensated for his outlay. Smith and Thompson, JJ., dissenting. Jackson v. The Municipality of Cumberland, 6 R. & G. N. S. R. 119, 6 C. L. T. 442.

25. **Code Sec. 783.**]—There is no appeal from a summary conviction made under part 55 of the Code by two justices of the peace in the North-West Territories; since they acquire jurisdiction by a sub-paragraph (IV.) of 782 (a) and not under sub-sec. (V.) of 782 (a). R. v. McLennan, (No. 2), 10 C. C. C. 14.

26. **Committing Neglected Child to Institution.**]—The commitment of a child to the care of an institution until the age of sixteen, after the conviction of the mother for allowing the child to grow up without salutory control, is within the jurisdiction of a stipendiary magistrate. Ex Parte Yates, 9 C. C. C. 359.

27. **Committal not Necessarily to Nearest Gaol** — N. W. Ter. Act.]—A committal to gaol in the North-West Territories for a violation of the Liquor License Ordinance by a justice of the peace, need not necessarily be to the nearest gaol. An aggrieved person who desires to question the conviction must apply to the justice to state and sign a case setting forth the grounds on which the conviction is quashed. Rex v. Nugent, 9 C. C. C. 1.

28. **Commitment to Other Place Than Common Gaol** — Verbal Order — Trespass.]—Plaintiff was convicted before two of the defendants, justices of the peace for King's county, of "selling liquor without license," and ordered to pay twenty dollars and costs otherwise a distress warrant to issue, and in default of goods to be imprisoned in the common gaol at Kingston, King's county, for 50 days, unless the penalty and costs, together with costs of distress and commitment and of conveying prisoner to gaol, should be sooner paid. At this time an Act had been passed to provide for the removal of the Shiretown from Kingston to Hampton, and, in the meantime, making the gaols of St. John and Westmoreland the common gaol of King's, the officer executing any process having the option of taking the prisoner either to St. John or Westmoreland. The constable not being able to find any goods to levy on, the justices issued a warrant of commitment, directing the plaintiff to be taken to Kingston, and there imprisoned for 50 days unless the penalty and costs (including costs of distress warrant and of conveying plaintiff to gaol) be sooner paid. The justices verbally directed the constable to take plaintiff to St. John, and the fees were made up for taking him there. Plaintiff was only confined a few days, when he was discharged by Judge's order :—Held, in an action brought against the justices and constable for false imprisonment : 1. That the warrant of commitment was illegal, both as to amount and place of imprisonment, and that the justices had no authority verbally, to direct the constable to take the plaintiff to St. John. 2. That, in sec. 11 of the 1 Rev. Stat. cap. 129, the word "or" should be read "and," and that the provisions of the section did not apply in this case so as to protect the justices. Quære, whether an offence is sufficiently stated in a conviction for selling "liquor" without license. Campbell v. Flewelling, et al, 2 Pug., N. B. R. 403.

29. **Consanguinity Within the Ninth Degree.**]—The consanguinity of the justice within the ninth degree to the pro-

secutor, where such consanguinity is denied by the justice and was unknown to the defendant until the trial, does not disqualify the Justice. EX PARTE VICTORY, 32 N. B. R. 249.

30. **Contempt.**]—A justice may commit for contempt while in the execution of his office, out of sessions, but it must be by a warrant in writing, and for a specified period. JONES v. GLASSFORD, M. T. 2 Vict. O. R.

31. **Contempt.**]—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 O. S. 486.

Quære, whether a justice of the peace executing his duty in his own house and not presiding in any court, can legally punish for a contempt committed there. IB.

32. **Contempt.**]—While a power resides in any court or Judge to commit for contempt, it is in the privilege of such court or Judge to determine on the facts, and it does not belong to any higher tribunal to examine into the truth of the case. IN RE CLARKE, 7 U. C. R. 223.

A justice of the peace, while sitting in the discharge of his duty, has the power, without any formal proceeding, to order at once into custody, and cause the removal of any party who by his indecent behaviour or insulting language is obstructing the administration of justice; but he has no power either at the time of misconduct much less on the next day to make out a warrant to a constable and to commit the offending party to gaol for any certain time by way of punishment, without adjudging him formally, after a summons to appear for hearing, to such punishment on account of his contempt, and making a minute of such sentence. IB.

A warrant to a constable to commit for contempt, containing a direction to detain the party for the space of two weeks, and until he shall pay the costs of his apprehension and conveyance to gaol, is defective. IB. See YOUNG v. SAYLOR, 23 O. R. 513, 20 A. R. 615.

33. **Conviction** — ADJOURNMENT — ABSENCE OF MAGISTRATE.]—Under Part LVIII. of the Crim. Code, art. 857, a justice may adjourn the hearing of a complaint, in his discretion, for a period not exceeding eight days. In the charter of the city of Montreal, the said provisions of Part LVIII. are applied respecting summary proceedings before the recorder's court. Where an adjournment was made irregularly and without authority by the clerk of the court in the absence of the recorder, to a period beyond that prescribed by law : Held, that the recorder was functus officio, his jurisdiction having ceased at the expiry of the eight days. PARÉ v. CITY OF MONTREAL, 10 C. C. C. 295.

34. **Conviction** — NO DEFECTS ON FACE]—The court of Queen's bench will not on certiorari quash an adjudication by a justice having jurisdiction over the subject matter, if no defects appear on its face, and no mere error of the tribunal, as to law or fact, involved in such determination, will suffice to make the adjudication open to review by certiorari where the adjudication is by statute final. REX v. BEAGAN, (No. 1), 6 C. C. C. 55, 36 N. S. R. 206.

35. **Conviction** — SERVICE OF SUMMONS — REASONABLE TIME OF SUMMONS.]—In a stated case by the justice, the facts set out were that on information being laid, defendant was personally served with a summons to appear the next forenoon to answer to the charge. Defendant ignored the summons, his excuse being that he could not secure counsel, and the magistrate proceeded in his absence to hear the charge and convicted him :—Held, that the magistrate acted within his jurisdiction, the question of reasonable service of summons being a matter for his decision. REX v. CRAIG, 10 C. C. C. 249.

36. **Conviction** — OFFENCE IN, DIFFERENT FROM THAT CHARGED IN SUMMONS.]—An action was brought against defendant, in the police court at the suit of city of Halifax, for an alleged violation of a city ordinance in keeping a marine and junk store without license therefor, and, after trial, the defendant was convicted of keeping a rag and junk shop without license :—Held, per Weatherbe and Rigby, JJ., that the conviction was bad in that the offence for which the defendant was convicted was different from that charged in the summons. Per Rigby, J.,

that the criminal side of the city court had jurisdiction over the subject matter, and could afford complete redress, and that the prosecution was wrongly instituted in the police court, at the suit of the city. THE CITY OF HALIFAX v. O'CONNOR, 3 R. & G. N. S. R. 190.

37. **Conviction** — QUESTION OF FACT — NO REVIEW UPON CERTIORARI.]—Defendant was charged with an offence against the Lord's Day Act of Ontario, R. S. O. 1897, ch. 246, and adjudged to pay a fine. Upon motion for a rule nisi to quash the conviction :—Held, that the finding of the magistrate upon a question of fact within his jurisdiction would not be reviewed upon certiorari, the remedy, if any, was by appeal. Rule refused. REGINA v. URQUHART, 4 C. C. C. 256, 20 Occ. N. 7.

38. **Conviction for Third Offence.**]—Defendant was convicted in her absence of a third offence against the Canada Temperance Act, 1878, and was sentenced to imprisonment for sixty days in the county jail at Annapolis, and to pay the sum of $9.33 costs to the prosecutor, and in default to be imprisoned for a further term of fifteen days :—Held, that the magistrate had exceeded his jurisdiction in making the conviction in the absence of the defendant, and that the conviction must therefore be set aside. Also, that under the Canada Temperance Act, sec. 107, it is imperative upon the magistrate to adopt the procedure specially made for cases under the Act, the express provisions in that section taking the matter out of the ordinary course laid down in the Summary Convictions Act. REGINA v. SALTER, 20 N. S. R. 206, 8 C. L. T. 380.

39. **Conviction Not Conformable to Municipal By-law** — PAYMENT OF FINE — ACQUIESCENCE.]—A by-law of the town of Levis enacted that all umbrella-menders whether residing in the town of Levis or not, but carrying out that trade or business there, before carrying on such trade or business should take out a license, and that on failure to do so they should be liable to a fine of $50 or to imprisonment for one month. The applicant was convicted and ordered to pay a fine and in default of immediate payment to be imprisoned for fifteen days, because he "was arrested by constable Odillon Houde at sight within the limits of the town of Levis, whilst, in contravention of the town by-law, soliciting orders as an umbrella-mender without having taken out the license required by the said by-law and the law." The applicant thereupon paid the fine :—Held, that the conviction was not conformable to the by-law, which did not require that those who solicited orders as umbrella-menders should take our licenses; that the conviction was therefore entirely beyond the jurisdiction of the justice of the peace. 2. The applicant must be presumed to have paid his fine to obtain his liberty, and such payment did not therefore constitute an acquiescence. CARDONI v. ROBITAILLE, Q. R. 25 S. C. 444.

40. **Conviction Varying from Minute.**]—Held, that the 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.

41. **Corporation.**]—The word "person" in R. S. C. c. 1, s. 7, s.-s. 21, 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. RE CHAPMAN AND CITY OF LONDON, RE CHAPMAN AND LONDON WATER COMMISSIONERS, 19 O. R. 33.

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 person who intends to present an indictment against them. IB.

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. IB.

42. **County Magistrate** — SUMMARY TRIAL.]—By an Act of the Parliament of Canada, Stipendiary and Police Magistrates in cities and incorporated towns have jurisdiction to hear charges under

Part LV. of the Criminal Code, and to sentence the accused to a penalty not exceeding that prescribed by the statute. A police or stipendiary magistrate for a county, though he may have some jurisdiction in a city within the county, is not a stipendiary or police magistrate within the meaning of the Act, and has no jurisdiction under the Act to try summarily. REX v. BENNER, 8 C. C. C. 398, 35 N. B. R. 632.

43. **County Stipendiary** — JURISDICTION. —R. S., 1900, c. 33, regulating the appointment of stipendiary magistrates makes the whole county for which he is appointed the jurisdiction of a county stipendiary. There being no legislation to the contrary, he may therefore convict for an offence committed within an incorporated town. REX v. GIOVANNETTI, 34 N. S. R. 505.

44. **Deed.**]—Quære, per Graham, E. J. is the name of the county for which he acts standing at the head of a certificate of the attestation of a witness to a deed and necessary to its being registered, sufficient to show jurisdiction in the justice of the peace who signs the certificate? PHINNEY v. MORSE, 25 N. S. R. 509.

45. **Different Justice.**]—A prosecution for selling liquor without license was instituted before A., a justice who, on the return of the summons, adjourned the trial. The defendant then went before another justice, and admitted the sale, whereupon such justice imposed a fine upon him. At the adjourned hearing before A., the defendant pleaded this conviction in bar, but A., notwithstanding, proceeded with the case, and convicted the defendant :—Held, that this conviction was good. REGINA v. ROBERTS, 5 All., N. B. R. 531.

46. **Disorderly House** — GAMING.] — CODE SEC. 783.]—A magistrate has jurisdiction by Code sec. 783 (f) to try summarily without consent a charge of keeping a common gaming house, as by sec. 196 a common gaming house is included in the term disorderly house; and the rule of construction "nositur a sociis" does not apply to sec. 783 (f). R. v. FLYNN, 9 C. C. C. 550, 1 W. L. R. 388.

47. **Disqualification** — INTEREST — CANADA TEMPERANCE ACT.]—Order for prohibition was granted against two justices of the peace on the grounds that they were disqualified from adjudicating on a charge for a violation of the Canada Temperance Act, by reason of their being associated with a Temperance Alliance, of which the president was the party prosecuting, and which association benefitted by any fine imposed. DAIGNAULT v. EMERSON ET AL, 5 C. C. C. 534, Q. R. 20 S. C. 310.

48. **Disqualification** — SAME BUSINESS — BIAS.]—Defendant was charged with a violation of the Transient Traders License by-law of the town of Arnprior :—Held, that the convicting magistrate was disqualified from adjudicating upon the charge by reason of his being engaged in the same business as defendant. Conviction quashed. REX v. LEESON, 5 C. C. C. 185.

49. **Distilling Spirits.**]—Justices of the peace out of session have no jurisdiction to try misdemeanours in a summary manner, except on special statutory authority; and it was held, therefore, that a conviction by two justices of the peace, under 46 Vict. c. 15 (D.), for assisting in the distilling of spirits contrary to that Act, must be quashed. REGINA v. CARTER, 5 O. R. 651.

50. **Distress Warrant** — SEIZURE UNDER — PROCEEDINGS IN RIGHT OF THE CROWN — REPLEVIN — REMOVAL FROM COUNTY COURT UNDER CONSOL. STAT. CAP. 37, s. 201 — CERTIORARI — GOODS IN CUSTODY OF THE LAW.]—A distress to enforce payment of a fine imposed 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. cap. 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. Stats., cap. 37, s. 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, 26 N. B. R. 99.

51. **District Magistrates** — Provincial Legislature (Quebec) — Summary Trial — Speedy Trial.]—In the Province of Quebec, district magistrates are appointed by the Provincial Government and a mixed jurisdiction is conferred upon them. Under Part LV. of the Code, a district magistrate thus appointed, may hold a "summary trial" for an offence mentioned in sec. 783, but has no jurisdiction to try persons under section 785. Under Part LIV. of the Crim. Code the jurisdiction given to a district magistrate is strictly limited; he is empowered by it to hold a "speedy trial" on consent of an accused person actually in custody or bailed to appear for trial. Upon the election of accused, after preliminary enquiry and committal for trial by the regular tribunal, in favor of a "speedy trial," a district magistrate may hold the "speedy trial" but the conditions of the statute (Part LIV.) must be strictly followed, otherwise there is no jurisdiction and judgment consequently null and void. Rex v. Breckenridge, 7 C. C. C. 116, Q. R. 12 K. B. 474.

52. **Effect of By-law.**]—The by-law directed imprisonment only in default of distress. Quære, whether 32 & 33 Vict. c. 31, s. 59, would apply so as to enable the justice to commit under it in the first instance upon proper evidence. McLellan v. McKinnon, 1 O. R. 219.

Quære, whether upon the evidence set out in the report of the case the finding that the plaintiff was not put on hard labour was justified. Ib.

53. **Evidence to be in Writing.**]—Semble that it is the duty of a magistrate at a trial under his summary jurisdiction, to take the examination and evidence in writing. Regina v. Flannigan, 32 U. C. R. 593.

54. **Evidence of Previous Conviction** — Magistrate Making Enquiry — Time for.]—A police magistrate having reasons for believing that accused has been previously convicted, and the Crown not offering evidence of such previous conviction, should himself enquire into the question before releasing accused on suspended sentence on the present charge; the proper time for taking such evidence being after the accused has been tried and found guilty of the offence upon which he is then adjudicating. Rex v. Bonnevie, 10 C. C. C. 376.

55. **Excess of Jurisdiction** — Conversion of Charge in Order to Try Summarily.]—Where an information charges an offence which magistrates have no jurisdiction to try summarily, it cannot be converted into one which they have jurisdiction to try summarily and so tried on the original information. An appeal will therefore be allowed. Regina v. Dungey, 5 C. C. C. 38, 2 O. L. R. 223.

56. **Excessive Punishment.**]—Held, following Regina v. Brady, 12 O. R. 358, that where imprisonment is directed on non-payment of a penalty, the award of distress of the goods to levy it, and then imprisonment in case the distress prove insufficient, is invalid in law, and an excess of jurisdiction. Regina v. Lynch, 12 O. R. 372.

Held, that the punishment being in excess of that which might have been lawfully imposed, the defect was not cured by ss. 2 and 3 of 49 Vict. c. 49 (D.). Ib.

57. **Ex-Officio Justice of the Peace** — Session in City Having Separate Magistrate.]—On appeal from an order dismissing an information for an offence against a provincial statute, in the county of York, preliminary objection was taken on the ground that the police magistrate had no jurisdiction to adjudicate on the case, sitting in the city of Toronto :—Held, that a police magistrate, ex-officio possessing the power of two justices of the peace, has power to try a case arising in the county, sitting anywhere in the county, the only restriction upon his acting in the city of Toronto being that he could not try a case originating in the city except in the illness, absence or at the request of the police magistrate for the city. Regina v. McLean, 3 C. C. C. 323.

58. **Failure to Have Witness Sign His Depositions** — Matter of Procedure.]—Defendant was convicted for selling intoxicating liquors contrary to the provisions of the Canada Temperance Act. Objection being taken, that the justices acted without jurisdiction inasmuch as the depositions of the witnesses called on the part of the prosecution were not read over to nor signed by the witnesses, nor signed by the justices, before the accused was put on his defence :—Held,

on application for certiorari, that section 590 of the Crim. Code has relation only to a matter of procedure, and its not having been complied with, does not affect the jurisdiction of the magistrate to make the conviction. Ex Parte Doherty, 3 C. C. C. 310, 32 N. B. R. 479.

59. **False Arrest** — Responsibility of Justice Issuing Warrant of Arrest—Damages.]—An action was brought against a justice of the peace for false arrest :—Held, that the duties of a magistrate are clearly defined in Crim. Code secs. 558, 559 and 569. That a warrant of arrest issued by a justice of the peace without inquiry into the grounds upon which complainant had to suspect accused, and when the complainant was not justified by any serious reasonable or plausible grounds, renders the justice liable toward the accused under the Laws of Quebec. Murfina v. Sauve, 6 C. C. C. 275, Q. R. 19 S. C. 51.

60. **False Trade Description** — Charge Against Corporation.]—A charge against a corporation, for selling goods to which a false trade description was applied, should be by indictment under Crim. Code secs. 635, 639. Magistrates have no jurisdiction to adjudicate summarily upon such a charge under Crim. Code sec. 448. A justice of the peace cannot compel a corporation to appear before him in respect of an indictable offence. Reg. v. T. Eaton Co. Ltd., 2 C. C. C. 252, 29 O. R. 591, 31 O. R. 276.

61. **Felony Not Specifically Charged.**]—The information stated that the informant had "good reason to believe that the death of F. S. was caused by the administration of some poisonous drug by J. S., his wife on or before 15th March last," and on this charge a warrant was procured for the apprehension of J. S. :—Held, that no felony was charged, for the administration of the drug might have been either accidental or as a medicine; and that there was nothing therefore on which to found the magistrate's jurisdiction. Stevens v. Stevens, 24 C. P. 424.

62. **Form of Warrant.**]—A warrant of commitment executed by two parties, and concluding "given under our hand and seal;" :—Held, sufficient. In re Clarke, 10 L. J. 331. See In re Smith, 10 L. J. 247.

63. **Hearing in Absence of Accused** — Appearance for Sentence — Right to Adduce Sentence.]—A justice of the peace has no right, after having heard the case in the absence of the accused, and issued a new warrant, to compel the accused to appear before him to receive sentence, to prevent the accused from adducing evidence when he appears in answer to that warrant. Levesque v. Asselin, 6 Q. P. R. 64.

64. **Imprisonment in Default of Payment of Fine** — Issue of Distress Ruinous to Family and Accused — Discretion of Two Convicting Justices.]—Where upon a charge under the Canada Temperance Act, two justices of the peace by a summary conviction imposed a fine, and distress in default, and imprisonment for want of distress, it was contended that the issuing of a warrant of distress would be ruinous to accused and to his family :—Held, that both justices together must exercise the discretionary power given them by sec. 875, Crim. Code, 1892, in dispensing with such distress, one justice having no jurisdiction to act alone in respect of the same. Rex v. Rawding, 7 C. C. C. 436.

65. **Inconsistent Allegations in Information.**]—Where an information contained every material averment necessary to give a magistrate jurisdiction to make an order upon the plaintiff to find sureties to the peace, but contained also additional matter, which it was contended so qualified and explained these averments as to render them nugatory :—Held, that this was a judicial question for the magistrate to decide, and therefore that in issuing his warrant for the appearance of the accused he was not acting without jurisdiction, even although a superior court might quash his order to find sureties. Sprung v. Anderson, 23 C. P. 152.

66. **Indian Act, 1880** — Certiorari.]—When a justice exceeds his jurisdiction in prosecutions under the Indian Act, a certiorari is not taken away by section 97, or by the Act 47 Vict. cap. 27, s. 15. Ex Parte Goodine, 25 N. B. R. 151.

67. **Indian Act** — Hay — Costs.]—The defendant was convicted for removing hay from Indian lands contrary to s. 26 of the Indian Act, R. S. C. c. 43 :—Held, that the word "hay" used in the statute

does not necessarily mean hay from natural grass only, but what is commonly known as hay, namely, either from natural grass or grass sown and cultivated. Held, also, that under this Act and the legislation incorporated therewith, there is no power to include in the conviction the costs of commitment and conveying to gaol. REGINA v. GOOD, 17 O. R. 725.

68. **Indian Superintendent Acting as Justice of the Peace.**]—Held, that the defendant, who was a visiting superintendent and commissioner of Indian affairs for the Brant and Haldimand reserve, had jurisdiction under the statute relating to Indian affairs to act as justice of the peace in the matter of a charge against the plaintiff for unlawfully trespassing upon and removing cordwood from the Indian reserve in the county of Brant. HUNTER v. GILKISON, 7 O. R. passing upon and removing cordwood from the Indian reserve in the county of Brant. HUNTER v. GILKISON, 7 O. R. 735.

69. **Information and Warrant Must Show Facts Giving Jurisdiction** — CONSTABLE.]—In an action for the conversion of a quantity of intoxicating liquors, the defendant P., justified as a constable, acting under a warrant purporting to have been issued by a justice of the peace under the provisions of the Canada Temperance Act, 1878, and the defendant M. as his assistant. The facts necessary to give jurisdiction did not appear either in the information or warrant, and the warrant was issued by one justice, contrary to section 108 of the Act :—Held, that the conviction was bad. Also, that the constable being a trespasser, his assistant could not justify under him. Nothing will be intended in favor of the jurisdiction of an inferior court. GALLIHEW v. PETERSON ET AL., 20 N. S. R. (8 R. & G.) 222, 8 C. L. T. 397.

70. **Information** — DATE OF OFFENCE — LIQUOR LICENSE ACT — PROHIBITION.] —An information was laid at Halifax on the 25th of April, 1904, by the chief inspector of licenses for the municipality of Halifax county, who resided 35 miles from the city of Halifax, before the stipendiary magistrate for the county of Halifax, against the defendant, charging him "for that he within the space of six months last past previous to this information at .... unlawfully, ... (a) did sell, ... and (b) did keep for sale .... intoxicating liquor contrary to the Liquor License Act." The only evidence offered by the prosecution was that of the chief constable for the county of Halifax, who swore that in company with the inspector on the 23rd April, 1904, he visited the defendant's house within the county of Halifax, and found a gallon of liquor in his bedroom, but there was no bar or other appliances generally found in a place where liquor is sold, and that he had on former occasions served the accused with papers under the Liquor License Act. The defendant gave no evidence nor called any witnesses, but asked for a dismissal of the complaint on several grounds. The justice adjourned to consider the application of the defendant who in the meantime applied ex parte for a writ of prohibition under Crown Rule 72 :—Held, following Rex v. Boutillier, 24 Occ. N. 240, that, as it did not appear by the information that it was laid within six months after the commission of the offence or that the defendant had committed the offence within six months previous to its being laid, and as the evidence given on the trial in the presence of the defendant did not amount to a charge for violation of the law so as to dispense with the formality of an information, the magistrate was acting without jurisdiction, and should be prohibited from further proceeding in the matter. Regina v. Bennett, 1 O. R. 445, referred to. REX v. BREEN, 24 Occ. N. 325.

71. **Information on Oath** — EFFECT OF WARRANT.]—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. c. 102, s. 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, 15 C. P. 584.

72. **Information** — WHERE AN ACT REQUIRES PARTICULAR PERSON TO PROSECUTE.]—Where an Act requires a particular person to prosecute for an offence, the information must be laid by him, or at least by his authority, and in his name; and if it is laid in the name of another

person the justice has no jurisdiction to proceed. MAYOR OF ST. JOHN v. MASTERS ET AL., 19 N. B. R. 587.

73. **Inserting Words in Affidavit.**]—It was stated in an affidavit in support of the rule for a new trial in an action for seduction, that the plaintiff's daughter had sworn before a magistrate that defendant never had criminal connection with her. The magistrate, in an affidavit used on shewing cause, stated that the defendant's brother, S., with the girl said to have been seduced, and her mother came to him together, saying that the girl was going to clear his brother, that his mother was very ill, and the rumour was affecting her very much; that he, the magistrate, wishing to do something to let the old lady die easy, and at the same time to let the girl have a chance to swear the child on S., inserted in the affidavit taken before him the words "criminal connection," instead of "carnal connection". Such conduct was strongly censured. MCILROY v. HALL, 25 U. C. R. 303.

74. **Insufficient Information and Evidence** — PROHIBITION.]—Where an information, for a violation of the Liquor License Act, did not sufficiently state that the offence had been committed within the time limited by statute, and the evidence at the trial, before the magistrate did not disclose any offence against the law :—Held, the magistrate had no jurisdiction, and order for prohibition granted. REX v. BREEN, 8 C. C. C. 146, 24 Occ. N. 325.

75. **Intent to do Bodily Harm.**]—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, that if not sufficient to charge a felony under s. 17 of 32 Vict. c. 20 (D.), it was a good conviction for a misdemeanour under s. 19, the necessary statement of the intent being immaterial. IN RE BOUCHER, 4 A. R. 191.

The police magistrate has jurisdiction under the constitution to try either of these offences, the court being constituted by the statute of the Province, and jurisdiction over the offence assigned to it as an existing tribunal by the laws of the Dominion. IB.

76. **Irregularities** — GAOLER'S LIABILITY.]—Where justices have a general jurisdiction over the subject matter upon which they have issued a warrant of commitment to the gaoler, though their proceedings be erroneous, the gaoler is not liable. Secus, if the proceedings be wholly void. FERGUSON v. ADAMS, 5 U. C. R. 194.

77. **Issuing Execution** — LIABILITY.]—The judgment of an inferior court, involving a question of jurisdiction, is not conclusive; therefore, a justice of the peace is liable in an action of trespass for issuing an execution on a judgment recovered before him in a case in which he had no jurisdiction because the title to land came in question, though the judgment remains unreversed. PICKETT v. PERKINS, 1 Han., N. B. R. 131.

78. **Jurisdiction.**]—Where a justice issued a summons and defendant appeared and pleaded, the justice then becoming seized of the case, no other justice or magistrate has a right to sit on it or to adjudicate or interfere in any way, unless at his request. Though all justices in a county are equal in authority, yet in the public interest, when a party charged comes before a magistrate in obedience to a summons, or warrant, no other magistrate shall interfere in the adjudication upon the charge, except on request. R. v. MCRAE, 2 C. C. C. 49 28 O. R. 569.

79. **Jurisdiction under Code Sec. 786** — SUMMARY TRIAL.]—It is the duty of a magistrate to give the information to the accused regarding the next court at which the case might be tried by jury, even though the accused has the right and may have elected to be tried summarily before a police magistrate. Unless the provisions of Code sec. 786 are strictly adhered to there is no jurisdiction to hold a "summary trial," and no amendment or enlargement of the charge can be made without giving the accused the right to re-elect. REX v. WALSH & LAMONT, 8 C. C. C. 101, 7 O. L. R. 149.

80. **Justices Sitting for Magistrate.**]—Jurisdiction of justices of the peace in the absence of police magistrate. See REGINA v. GORDON, 16 O. R. 64. REGINA v. LYNCH, 19 O. R. 664.

81. **Justice to Conduct Proceedings Alone.**]—A justice of the peace having sole jurisdiction, issued a summons to accused to appear before him and answer to the charge of assault. Defendant appeared, and pleaded "Not guilty". Whereupon, three other magistrates who were present without the consent or request of the presiding justice, gave judgment dismissing the case. The summoning justice gave judgment convicting the defendant. All justices are equal in authority, but have no right to adjudicate or interfere with another in any way except at his request, either at the preliminary enquiry or summary trial, and the judgment of the summoning magistrate will be upheld. REGINA v. MCRAE, 2 C. C. C. 49, 28 O. R. 569.

82. **Legality of Imprisonment** — TERRITORIAL LIMITS.]—Imprisonment in default of payment of a fine having been ordered as to a defendant charged with a violation of the Canada Temperance Act, by the stipendiary magistrate of the incorporated town of Springhill, and there being no place for the confinement of prisoners describable as a common gaol within that town :—Held, the defendant was unlawfully conveyed to and confined in the common gaol at Amherst, the county seat of the county in which Springhill is situated, though that place is outside the jurisdiction of the convicting magistrate. IN RE BURKE, 27 N. S. R. 286.

83. **Liability of Informant** — DEFECTIVE INFORMATION — SEARCH WARRANT.] —An informant is not liable in damages, if after stating the facts fairly to the magistrate, the latter takes an erroneous view of the matter, and exceeds his jurisdiction by issuing a search warrant on an information which does not disclose a criminal offence. PRING v. WYATT, 7 C. C. C. 60, 5 O. L. R. 505, 23 Occ. N. 191.

84. **Liquor License** — PLEA OF GUILTY — NO JURISDICTION TO SUSPEND SENTENCE.]—On a plea of guilty, upon a charge of an infraction of the Quebec License Law, a magistrate has no jurisdiction to suspend sentence on payment by the accused of the costs of the prosecution, when by the statute a penalty is provided. The minimum penalty at least must be imposed. REX v. VERDON, 8 C. C. C. 353.

85. **Locality of Crime** — OFFENCE COMPLETED IN ANOTHER PROVINCE.]—If an accused person is charged with having committed an indictable offence within the limits over which a justice of the peace has jurisdiction, the justice may issue a warrant or summons to compel the accused to appear before him for the purpose of preliminary enquiry; and the accused may be arrested in any part of Canada upon the warrant being "endorsed" by a justice within whose jurisdiction the accused may be found. Crim. Code 565 and Code form H. REGINA v. GILLESPIE, (No. 2) 2 C. C. C. 313.

86. **Locality of Offence Not Particularly Specified in Conviction.**]—The convicting magistrate having general jurisdiction throughout the whole county, a summary conviction not stating specifically the particular part of the county where the offence was committed is not necessarily rendered bad thereby, provided the offence is stated to have been committed within the county over which the magistrate had jurisdiction. REX v. MEIKLEHAM, 10 C. C. C. 382.

87. **Locality of Offence.**]—No conviction or order, or warrant for enforcing the same, made by any justice of the peace, shall be held invalid for any irregularity or insufficiency therein on removal by certiorari, provided that the Judge or court before whom or which the question is raised is, upon perusal of the depositions, satisfied that an offence of the nature described in the conviction, order or warrant, over which such justice has jurisdiction, has been committed, and that the punishment imposed is not excessive. REGINA v. MCGREGOR, 2 C. C. C. 410, 26 O. R. 115.

88. **Locality of Offence.**]—On motion to quash a conviction by two justices of the county of Norfolk for an assault :—Held, that stating the offence to have been committed at defendant's place in the township of Townsend was sufficient, for C. S. U. C. c. 3, s. 1, s.-s. 37, shews that township to be within the county. REGINA v. SHAW, 23 U. C. R. 616.

89. **Merits** — CERTIORARI.]—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 upon certiorari. REX v. BEAGAN, (No. 1), 36 N. S. Reps. 206.

90. **Magistrate as Witness** — CERTIORARI TO QUASH CONVICTION.]—Defendant was convicted by a stipendiary magistrate of selling liquor without license, and a fine imposed. An order nisi was granted for a certiorari on the grounds of disqualification of the presiding magistrate :—Held, that as a conviction against a person selling liquor without license is made final and conclusive under sec. 104 of the Liquor License Act, 1896, certiorari is in effect taken away. Sec. 100 of the Act makes police magistrates or justices trying the case final judges of the sufficiency of the evidence to establish an infraction of the law, and sec. 101 provides that when a person is charged with selling without a license it is incumbent upon him to prove that he is duly licensed. The refusal of a magistrate to give evidence, upon proof that he is not a material witness does not disqualify him, and he does not thereby cease to have jurisdiction. EX PARTE HEBERT, 4 C. C. C. 153, 34 N. B. R. 455.

91. **Master and Servant Act, (Ont.)** — SWORN INFORMATION — AMENDED INFORMATION NOT RE-SWORN.]—Accused was brought before a justice of the peace on a charge of a violation of the Master and Servant Act, R. S. O. The magistrate in the presence of the prosecutor amended the sworn information under which accused was arrested, but the information, as amended, was not re-sworn. It was then read over to the prisoner and he was informed that he was to be tried under it as amended. No objection being made by him the trial proceeded, and he was adjudged to pay a fine, or in default to be imprisoned for ten days :—Held, that the amended information, although not re-sworn, having been read over to the prisoner without protest or objection on his part, the magistrate may proceed to try him upon it, and any irregularity as to date or place of offence is cured by sec. 889 of the Code, provided the court is satisfied after a perusal of the depositions that an offence of the nature described has been committed, and the magistrate has jurisdiction over it. REX v. LEWIS, 6 C. C. C. 499, 5 O. L. R. 509.

92. **Ministerial Duties** — ONE JUSTICE SUFFICIENT.]—In cases tried under the Summary Act, purely ministerial duties such as receiving complaint, issuing warrant, etc., may be done by one justice of the peace, even where the statute under which the proceedings are had, says that the case can only be tried by two justices of the peace. BOUSQUET v. GAGNON, Q. R. 23 S. C. 35.

93. **Minute of Judgment** — VARIANCE FROM FORMAL CONVICTION.]—The minute of a conviction made under the Summary Convictions Act, 32 & 33 Vict. cap. 31, s. 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 parties 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. REG. v. PERLEY & HARTT, IN RE WHITE, 25 N. B. R. 43.

94. **Misconduct of Magistrate** — APPEAL — CERTIORARI.]—Where a magistrate has acted without jurisdiction, or improperly, or in collusion with the prosecution, a Superior Court has power to grant a writ of certiorari to quash the conviction, even where an appeal having been taken it was rendered abortive, the magistrate having failed to make a return of the conviction within the time prescribed for making such appeal. EX PARTE COWAN, 9 C. C. C. 454, 36 N. B. R. 503.

95. **Money Obtained by Fraud.**]—The plaintiff sued before a justice of the peace to recover back money paid under a fraudulent statement of facts by the defendant :—Held, that the matter might be entertained by the justice under the jurisdiction conferred by R. S. 5th Series c. 102, as a "debt". FRASER v. MCLANDERS, 25 N. S. R. 542.

96. **Moneys Received by Magistrate** — Recovery After Conviction Quashed.]—The respondent, a justice of the peace had condemned plaintiff to pay a fine and costs, or to be imprisoned for three months on a charge of slander. On a motion to have the justice compelled by coercive imprisonment to repay said sum :—Held, that a justice of the peace being an official having the custody of money under his judicial authority, may be compelled by coercive imprisonment to bring into court the money which he has received by virtue of his office. Motion granted as to fine only, the costs having been collected by a third party. Mercier v. Plamondon, 6 C. C. C. 223, Q. R. 20 S. C. 288.

97. **Must Show Jurisdiction.**]—Where a warrant to levy for school rates stated the issuing justice to be a justice for the county of H., but did not show on its face that the rates had been assessed for that county, or that the warrant had been issued therein :—Held, that the warrant was bad and the defendant, who directed the levy by a constable, was liable for a wrongful taking. McDonald v. Miller, 23 N. S. R. 393.

98. **Obstructing Peace Officer** — Consent of Accused.]—On application for a rule absolute for certiorari to quash a conviction by a police magistrate on the grounds of want of jurisdiction to convict, the accused not having consented to be tried summarily on a charge for wilfully obstructing a peace officer in the execution of his duty :—Held, that under the summary convictions clauses of the Code, accused can be tried summarily by a magistrate, or he can be tried before a magistrate as for an indictable offence. A magistrate is bound to inform the accused of the exact sections of the Code under which proceedings were taken. If the information is laid under a particular section then the offence under that section has to be proved; but when it deals with an offence which may fall under one or more sections, or under the common law, then the conviction has to be looked to. Rex v. Nelson, 8 B. C. R. 110, 4 C. C. C. 461.

99. **Offence Committed in a Harbour** — Jurisdiction — Adjacent County.]—1. Upon the shores of the high sea it is only land not covered by the sea which forms part of the adjacent counties, and, therefore, the jurisdiction of the courts of these counties does not extend beyond the line of low tide. 2. Bays, gulfs, mouths of rivers, harbours, ports, roadsteads, or waters situated between the necks of land, where one can see from one bank to the other, form part of neighbouring or adjacent counties, and consequently an offence committed upon such waters is within the territorial jurisdiction, and not the Admiralty. 3. The port of Perce, in which an offence was committed, is part of the adjacent county of Gaspe, having regard to the facts (a) that it is an inland water almost entirely surrounded by land, and lying between necks of land, and (b) that the statute, in making the river the border of this county and including it in the nearest islands, includes also the waters of the ports and the roadsteads which lie between these islands and the mainland because they are between necks of land. 4. Consequently, a magistrate of the district of the county of Gaspe has jurisdiction over an offence or a tort or a quasi-tort committed at this place : and a writ of prohibition against the enforcement of a decision of such a magistrate will not be maintained. Duguay v. North American Transportation Co., Q. R. 22 S. C. 517.

100. **Offences on the Great Lakes.**]—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 inquire into offences committed on said lakes, although in American waters. Regina v. Sharp, 5 P. R. 135.

101. **Omission to Give Security for Costs** — Foreign Corporation — Goods Sold and Delivered.]—The plaintiffs, who were a company incorporated abroad, but having a place of business in the province, brought an action against the defendant in a justice's court for goods sold and delivered. To prove their case they put in evidence a paper in the form of a promissory note, whereby the defendant promised to pay the plaintiffs a certain sum with interest. There were certain conditions as to possession of the goods and the title thereto incorporated in the note or paper. Security for costs

was not demanded at the trial and none was given :—Held, that indebitatus assumpsit would lie, and that the omission to give security for costs did not deprive the magistrate of jurisdiction to try the case. Per Tuck, C. J., that 49 Vict. c. 53, s. 1, does not apply to companies incorporated abroad, but having a place of business within the province. Per Barker, J., that the defendant by not demanding the security at trial waived the benefit of 49 V. c. 53. MASSEY-HARRIS CO. v. STAIRS, 34 N. B. R. 591.

102. **One Justice** — SUMMARY TRIAL.]—A justice of the peace having no extended powers, has no jurisdiction under Part LV. of the Code to hold a "summary trial". REX v. COTE, 8 C. C. C. 393, 25 Q. S. C. R. 33.

103. **One Justice** — JURISDICTION.]—There is no jurisdiction in one magistrate under the Summary Convictions Act, R. S. c. 103, as amended by the Acts of 1889, c. 36, to convict for using abusive language on a highway contrary to R. S. c. 162, s. 12. On quashing such a conviction the court required that no action should be brought by defendant. REGINA v. MCLEOD, 30 N. S. R. 191.

104. **One Justice Issuing Summons** — PENALTY BEFORE TWO.]—One justice may issue the summons on a complaint under the Act 33 Vict. cap. 23, though the penalty is recoverable before two justices) REGINA v. SIMMONS, 1 Pug., N. B. R. 158.

105. **Payment for Use of 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 the payment of this sum there was a clear excess of jurisdiction, and that ordering distress, &c., was a further excess, and that the matter was one of principle, and not of form, and the conviction was quashed. Regina v. Wallace, 4 O. R. 127, and Regina v. Walsh, 2 O. R. 206, commented on. REGINA v. ELLIOTT, 12 O. R. 524.

106. **Perjury** — SUMMARY TRIAL BY CONSENT.]—Where defendant elected to be tried summarily on a charge of perjury, and upon hearing the evidence the magistrate adjudicated summarily and dismissed the charge :—Held, on motion for a rule nisi on the ground that a police magistrate has no jurisdiction to summarily dispose of a charge of perjury by reason of sec. 791 of the Code, that, the magistrate had jurisdiction to try summarily a case of perjury, and when the offence is not proved he may dismiss the charge; that by sec. 799, every person who obtains a certificate of dismissal, etc., shall be relieved from all further and other criminal proceedings for the same cause. REX v. BURNS, (No. 2) 4 C. C. C. 330, 1 O. L. R. 341.

107. **Place** — NO OBJECTION — CONVICTION.]—Where the jurisdiction of the justices appeared upon the conviction, which was in the form prescribed by 1 Rev. Stat. cap. 138, and the place of sale spoken of at the trial appeared to be known by all parties, and no objection was then made that it was not within the jurisdiction of the justices :—Held, that the jurisdiction sufficiently appeared. EX PARTE DUNLAP, 3 All. N. B. R. 281.

108. **Place of Signing.**]—A case having been heard by two magistrates in the county, the conviction was signed by one of them in the city :—Quære, whether the signing of the conviction was a judicial or ministerial act, and therefore whether the place where it was done was material. LANGWITH v. DAWSON, 30 C. P. 375.

109. **Pleading to Defective Information.**]—The objection that defendant has pleaded guilty to a defective information is, under 32 & 33 Vict. c. 31, s. 5 (D.), not admissible. REGINA v. MCCARTHY, 11 O. R. 657.

Quære, whether the defendant could object to the regularity of the information, he having appeared in obedience to the summons and pleaded not guilty. REGINA v. ROE, 16 O. R. 1.

110. **Plea of Autrefois Convict.**]—Where, upon a charge of keeping a disorderly house, accused pleaded autrefois convict, and tendered in evidence a certificate of conviction upon a summary trial for the same offence by two justices of the peace :—Held, plea sufficiently made out, and prisoner discharged. REX v. CLARK, 9 C. C. C. 125.

111. **Police District** — JUDICIAL NOTICE.]—An applicant by habeas corpus had been committed by the stipendiary

magistrate for the municipality of Pictou, for an offence described as having been committed at "Hopewell, in the county of Pictou". By Acts of 1895, c. 89, s. 1, the municipality of the county of Pictou is made a police division. By Acts of 1895, c. 3, ss. 1, 2, the municipality is defined to be the county of Pictou, except such portions of it as are comprised within the limits of incorporated towns. The question being whether Hopewell might not be one of these, so that the warrant would not show jurisdiction on its face, as being within the limits presided over by the municipal stipendiary :—Held, the court will judicially recognize limits and bounds of towns, districts, etc., as far as they may be laid down in public statutes, and it appearing from the Act last referred to that Hopewell is described as a municipal polling section is part of the municipality, jurisdiction was sufficiently shown. REGINA v. W. MCDONALD, 29 N. S. R. 160. EX PARTE JAMES W. MCDONALD, 27 S. C. R. 683.

112. **Police Magistrate** — THEFT — CRIM. CODE SECS. 344-785.]—Under sec. 344 of the Crim. Code theft from the person, even though the amount stolen be less than $10, is an indictable offence, and where prisoner consents to be tried summarily by a police magistrate (although such consent is not necessary) the sentence imposed may be as great as if he had been tried before the general sessions of the peace, the police magistrate having power under sec. 785 of the Code to pass such sentence. REGINA v. CONLIN, 1 C. C. C. 41, 29 O. R. 28.

113. **Powers of** — MASTER AND SERVANT — COMPLAINT FOR NON-PAYMENT OF WAGES — DAMAGES FOR DISOBEDIENCE OF ORDERS — SET-OFF.]—B., a servant, under the provisions of s. 3 of Consolidated Ordinances c. 50, the Masters' and Servants' Ordinance, lodged with a justice of the peace a complaint against C., his master, for non-payment of wages, and on the hearing, besides that bearing on the question of wages, some evidence was introduced tending to show that, by reason of B's. neglect to obey C's. directions in regard to some oats, the oats became entirely spoilt, and, notwithstanding the objection of B's counsel, the justice expressed his determination to allow the claim for damages as a set-off to the wages :—Held, that the justice exceeded the power conferred on justices by the Ordinance in holding that, upon hearing of an information laid under s. 3, damages claimed for any of the causes set out in s. 2 can be adjudicated upon, and if found set off against wages proved under s. 3. IN RE BROWN & CRAFT, 21 Occ. N. 103.

114. **Power to Sit** — WHERE THERE IS A POLICE MAGISTRATE.] — An information was laid before a justice of the peace against the police magistrate of the city of Kaslo, for a breach by him of one of the city by-laws, and the justice of the peace granted a summons thereon, returnable at Nelson. By s. 212 of the Municipal Clauses Act, "No justice of the peace shall adjudicate upon or otherwise act in any case for a city where there is a police magistrate, except in the case of illness, or absence, or at the request of the police magistrate". Section 213 saves the jurisdiction of justice of the peace for the several districts, in regard to offences committed in any city situated within their respective districts in which there may be no police magistrate. The police magistrate was not ill or absent and did not request the justice of the peace to act. Upon motion for a prohibition against further proceedings upon the information : —Held, per Drake, J., dismissing the motion, that, in the particular circumstances there was, for the purpose of the case in question, no police magistrate in Kaslo, and that s. 212, supra did not apply, and that the ordinary jurisdiction of justices of the peace of the district, exercisable over its whole area, applied. The making of the summons returnable at Nelson was improper on the ground of inconvenience, but was within the jurisdiction of the justice of the peace. Any person may properly lay an information for the infraction of a city by-law, though the fine goes to the city. REGINA v. CHIPMAN, 5 B. C. R. 349, 1 C. C. C. 81.

115. **Preliminary Enquiry** —REMAND— PERSONAL PRESENCE OF ACCUSED.]— Accused upon arrest showed signs of insanity. The magistrate upon being advised of this fact by the police officers, adjourned the preliminary hearing and directed her commitment for the purpose of a medical examination without having the accused brought before him :—Held,

that prisoner could only be remanded after having been personally brought before the justice. RE SARAULT, 9 C. C. C. 448.

116. **Preliminary Enquiry** — BURGLARY — PROCEEDING WITH TRIAL.]—Where on a charge of burglary accused was tried and sentenced by a rural stipendiary magistrate to be imprisoned for two years and one day in the common gaol :—Held, on application for habeas corpus, that the magistrate had no jurisdiction over the offence further than to hold preliminary enquiry. Rule made absolute for habeas corpus. REX v. BLUCHER, 7 C. C. C. 278.

117. **Preliminary Inquiry** — CONTINUATION BEFORE ANOTHER MAGISTRATE — JURISDICTION—COMMENCEMENT DE NOVO.] —A preliminary inquiry in a criminal matter commenced before a magistrate cannot be continued by another. 2. But if a magistrate who has commenced a preliminary inquiry, dies or is deposed from office or resigns, or if he discharges himself from the matter, another competent magistrate may take the matter in hand, but he must begin the inquiry de novo; he may not continue the proceedings already commenced. 3. A Judge of sessions of the peace who commenced a preliminary inquiry, having obtained leave of absence, and having, without finishing the inquiry, departed for a journey to Europe, was held to have discharged himself from the matter; and in this case, with the consent of the Crown, the prosecutor properly obtained from another magistrate, who replaced the former, an order to commence de novo the preliminary inquiry. 4. A writ of certiorari to prevent the second magistrate from seizing himself of the matter and recommencing it was refused. BERTRAND v. ANGERS, Q. R. 21 S. C. 213.

118. **Prepayment of Witness Fees** — FAILURE OF WITNESS TO APPEAR — DISCRETION OF MAGISTRATE TO REFUSE WARRANT OF ARREST — REMEDY BY APPEAL.]—On failure of a witness to attend and give evidence for a violation of the Liquor License Act, after service of summons without witness fees had been proved, the magistrate refused to issue a warrant for his arrest :—Held, per Graham, E. J., that if the magistrate decided erroneously, his decision was not reviewable by habeas corpus proceedings. Per Meagher, J., that the magistrate had general jurisdiction over the subject of his charge, and where that is so, the general rule is that his judgments are not nullities, and consequently habeas corpus is not an appropriate remedy. The remedy is by way of appeal only. REX v. CLEMENTS, 4 C. C. C. 553, 34 N. S. R. 443.

119. **Proceedings as to Maintenance of Pauper** — JURISDICTION — NOTICE OF DISCONTINUANCE OF PREVIOUS PROCEEDINGS — INTEREST OF JUSTICE IN PROSECUTION — CERTIORARI — APPEAL.]—Proceedings were taken by the plaintiffs before a justice of the peace with a view to having a pauper made chargeable to poor district No. 5 in the county of Pictou. Subsequently, and without notice to district No. 5, proceedings against that district were discontinued, and proceedings were commenced before another justice with a view to having the pauper made chargeable to the defendant's district. On the depositions taken before the magistrate applied to in the second instance, the stipendiary magistrate for the county (who was also county treasurer) took further depositions, and made an adjudication that the pauper was legally chargeable to the defendant's district :—Held, that the adjudication so made was bad, both because of the failure to give notice of discontinuance of the original proceedings, and because the stipendiary magistrate, as county treasurer, was a party to the proceedings and should not have acted. Held, that the order made under the circumstances mentioned was open to attack either by certiorari or by appeal. PICTOU OVERSEERS OF THE POOR FOR DISTRICT NO. 7 v. PICTOU OVERSEERS OF THE POOR FOR DISTRICT NO. 6., 36 N. S. Reps. 326.

120. **Proceedings Taken in Foreign Country.**]—A magistrate has no jurisdiction to administer an oath and take examination within the limits of a foreign country, and a commitment founded on such proceedings is void, and affords no justification in an action of trespass against the magistrate. NARY v. OWEN, Ber .(569) 377, (N. B. R.).

121. **Prohibition.**]—A writ of prohibition may be issued to a justice of the peace to prohibit him from exercising a

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jurisdiction which he does not possess. Re Chapman and London Water Commissioners, 19 O. R. 33.

122. **Prohibition — Ministerial Acts.]**—Prohibition will not lie to restrain the issue and enforcement of a distress warrant by a justice of the peace upon a conviction regular on its face, which was within the jurisdiction of the justice making it, such acts being ministerial, not judicial. Judgment below, 26 O. R. 685, reversed. Regina v. Coursey, 27 O. R. 181.

123. **Provincial Legislation — Constitution of Court — Power Conferred by Act of Parliament.]**—The legislation of a province has power to declare that every stipendiary or police magistrate shall constitute a court, and shall have jurisdiction in such cases and offences as the Parliament of Canada says shall be dealt with therein. Ex Parte Vancini, 8 C. C. C. 164, 36 N. B. R. 456.

124. **Recognizance to Keep the Peace — Crim. Code Sec. 959.]**—Under sec. 959 of the Crim. Code, taking a recognizance to keep the peace for two years is beyond the jurisdiction of justices of the peace, and a stipendiary magistrate following Form XXX. of the Code, must be assumed to be proceeding under Code sec. 959. Where security was required for a period of two years :—Held, that such an order was null and void, and in excess of the powers conferred on the stipendiary magistrate. Re Sarah Smith's Bail, 6 C. C. C. 416.

125. **Recognizance — Certiorari.]**—If, in order to prosecute certiorari proceedings, a recognizance is entered into before a justice of the peace for a county other than that in which the conviction is made, the recognizance is invalid under the Ontario Crown Rules, 1886. Rex v. Johnson, 8 C. C. C. 123 ; 7 O. L. R. 525.

126. **Reducing Charge of Unlawfully Wounding to one of Common Assault.]**—A justice of the peace has no power to reduce a charge from one of unlawfully wounding with intent to do grievous bodily harm, to one of common assault, in order to bring it within his jurisdiction; and a conviction made on a plea of guilty to such reduced charge is no bar to a subsequent indictment for unlawfully wounding framed on the same facts, and will not support the plea of autrefois convict, since the conviction pleaded is null and void. Reg. v. Lee, 2 C. C. C. 233.

127. **Reeves in Unorganized Districts.]**—The reeves of municipalities in unorganized districts are, under the legislation relating thereto ex officio justices of the peace in their respective municipalities, with power to try alone, and convict for offences under the Liquor License Act, R. S. O. 1887, c. 194. Regina v. McGowan, 22 O. R. 497.

128. **Re-Examination of Witness — New Matter — Permission to Cross-Examine.]**—It is within the power of justices on a summary hearing to permit the prosecution to recall a witness for the purpose of opening up new matter in evidence, but when such is allowed the accused must also, if permission is applied for, be allowed to cross-examine upon such new matter. Rex v. Perras, 9 C. C. C. 364.

129. **Request to Proceed Summarily.]**—In a conviction for assault it was held unnecessary to shew on the face of the conviction that complainant prayed the magistrates to proceed summarily, for the form allowed by C. S. C. c. 103, s. 50, was followed; and if there was no such request, and therefore no jurisdiction, it should have been shewn by affidavit :—Held, also, that it was clearly no objection that the assault was not alleged to be unlawful. Regina v. Shaw, 23 U. C. R. 616. See also In re Switzer, 9 L. J. 266. Bagley q. t. v. Curtis, 15 C. P. 366.

130. **Right of Defendant to Call Witnesses.]**—Remarks upon the general right of a person charged before a magistrate with an indictable offence to call witnesses for his defence, and of a person whose extradition is demanded to shew by evidence that what he is charged with is not an extradition crime. Ih re Phipps 8 A. R. 77.

131. **Right of Supreme Court to Look at Evidence to Determine Jurisdiction Below.]**—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, 6 R. & G., 42, that the evidence being before the court it might be looked at to determine the question of jurisdiction. QUEEN v. McDONALD, 7 R. & G. N. S. R. 336, 7 C. L. T. 376.

132. **Right of Supreme Court to Review.**]—Every decision rendered by justices of the peace, even in criminal matters, in the Province of Quebec is open to review by certiorari in the Superior Courts, by virtue of the laws of Canada as well as by virtue of the Rev. Stats. of Quebec. LEONARD v. PELLETIER, 9 C. C. C. 19, 6 Q. P. R. 54.

133. **Sale of Flour.**]—The seller of flour in barrels not marked or branded under 4 & 5 Vict. c. 89, s. 23, was not liable to the penalty imposed, only the manufacturer or packer; and magistrates had no summary jurisdiction where the accumulated penalties were more than 10 pounds sterling. REGINA v. BEEKMAN, 2 U. C. R. 57.

134. **Same Justices** — TRIAL.]—Quære, whether a complaint under the Act 15 Vict. cap. 51, should be tried by the same justices who issued the summons. To be available, this objection should be taken at the trial. See EX PARTE MCCOLL, 3 All., N. B. R. 48.

135. **Seamen's Wages.**]—By the Act of Parliament 7 and 8 Vict. cap. 112, s. 15, in all cases of wages not exceeding 20 pounds sterling which shall be due and payable to any seaman, it shall be lawful for any justice of the peace in and for any part of Her Majesty's dominions where, or near to the place where the ship shall have ended her voyage, etc., to make an order for payment of the wages :—Held, 1. that any justice in the county where the voyage ended had jurisdiction. 2. That if there had been a deviation from the voyage agreed upon, or the ship was unseaworthy, the seaman had a right to determine the contract, and to recover wages to the time of leaving the ship. 3. That the jurisdiction of the justice under sec. 15 extended to all cases where wages were due and payable, and not merely to the case specified in section 11. 4. That the order of the justice need not fix any time for the payment of the wages. REGINA v. WHETEN, 3 All. N. B. R. 269.

136. **Seaman's Wages.**]—R. S. Canada, c. 74, s. 52, enables seamen to sue for wages in a summary manner "before any stipendiary magistrate, police magistrate or any two justices of the peace acting in or near the place where the service terminated". Proceedings were had before G. by seamen under the section, which resulted in the seizure of the vessel, and this action was in replevin by the owner. G. was stipendiary magistrate for the county (but not for the city) of Halifax, but by a special Act was allowed to sit within the city of Halifax, without adding to his jurisdiction. On trial of this action the Judge found that the services sued for terminated at the city of Halifax, and that G., having jurisdiction as to the county, was sitting "in or near the place" under the section, and consequently had jurisdiction. On appeal :—Held, that the expression "in or near" referred to places near the place of sitting, but themselves within the jurisdiction of the stipendiary magistrate, etc. GRANT v. WEBBER, 25 N. S. R. 193.

137. **Separate Charges** — SIMILAR OFFENCES — INFLUENCE OF FIRST CASE ON SECOND CHARGE.]—Defendant was summoned before a stipendiary magistrate to answer two charges for violating the Canada Temperance Act, on separate occasions. After adjourning both hearings from time to time, the magistrate dismissed the first charge and convicted defendant for the last offence. On a motion to quash the conviction, :—Held, that the evidence of the first case was calculated to influence the magistrate against the defendant on the second charge and a conviction under it was without jurisdiction. REX v. BURKE, (No. 2) 8 C. C. C. 14, 36 N. S. R. 408.

138. **Separation of Counties.**]—The affidavit of the returning officer verifying the roll was sworn, on the 2nd of January, before A., who held a commission as justice of the peace for the united counties of York, Ontario, and Peel. Ontario had been separated from York and Peel by proclamation issued at Quebec on the 31st December, but it was not shewn that any one in Ontario knew of this proclamation until after the election :—Held, that A. had authority to take the affidavit. REGINA EX REL. RITSON v. PERRY, 1 P. R. 237.

Quære, whether A., notwithstanding

the separation, would not still continue a justice of the peace for the three counties, and authorized to act for any one while he was in it, or at least for that in which he was resident. IB.

139. **Service of Summons** — ABSENCE OF ACCUSED FROM CANADA.]—Defendant was convicted for selling intoxicating liquors contrary to the provisions of the second part of the Canada Temperance Act. On the hearing it was shown that the summons had been served on his wife at the defendant's usual place of abode, but that at the time of service defendant was not in the Province and did not return until after the hearing :—Held, on application for certiorari, that the magistrate could not acquire any jurisdiction over the person of the defendant while he was out of the Province, and therefore the service was void. EX PARTE DONOVAN, 3 C. C. C. 286, 32 N. B. R. 374.

140. **Sheep Act.**]—The owner of a sheep killed or injured by a dog can, under R. S. O. 1877, c. 214, s. 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. 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 s. 87 of R. S. C. c. 178, should be applied; and the order nisi to quash the conviction was discharged. REGINA v. PERRIN, 16 O. R. 446.

141. **Stated Case** — REQUEST FOR, TO JUSTICES INVALIDLY WORDED — QUASHING APPEAL.]—Defendant having been convicted before two justices of the peace for an offence, caused the justices to be served with a request under sec. 900 of the Code, to state and sign a case "setting forth the grounds on which the said conviction is supported", as a preliminary to an appeal. A case was stated, delivered and filed by the justices in accordance with the provisions of the Code. At the hearing the informant appeared, and objected that the request was not in accordance with the provisions of s.-s.2, sec. 900, in that it did not request the justices to set forth the facts of the case or the grounds upon which the conviction is "questioned". It was contended that the defect had been waived, the justices having stated and delivered a case :—Held, that the provisions of s.-s. 2, sec. 900 of the Code are conditions precedent to the right of appeal, and not having been strictly complied with the appeal must be quashed. REX v. EARLEY, 10 C. C. C. 280, (No. 1).

142. **Statute Labour.**]—Under 1 Vict. c. i, s. 27, a magistrate cannot cause the arrest of a person in the first instance on a charge of neglect to perform statute labour; he must be first summoned before him. CRONKHITE v. SOMMERVILLE, 3 U. C. R. 129.

143. **Stipendiary Magistrate** — JURISDICTION CONCURRENT WITH TWO JUSTICES.]—The jurisdiction of the stipendiary magistrate under 3rd Revised Statutes, chapter 75, is concurrent only with two justices of the peace and not exclusive. ANDERSON v. MASON, 1 N. S. D. 1, 2 Old. N. S. R. 369.

144. **Stipendiary Magistrate** — WHOLE OF COUNTY — JURISDICTION IN TOWN.]—The jurisdiction conferred by R. S. N. S. c. 33, on stipendiary magistrates is for the whole of the county. Where a stipendiary has been appointed for a town within the county, but it nowhere appearing that such jurisdiction was exclusive, it was held that the county stipendiary had jurisdiction to try offences committed in the town. REX v. GIOVANETTI, 5 C. C. C. 157, 34 N. S. R. 505.

145. **Stipendiary Magistrate** — JURISDICTION.]—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., cap. 7. REGINA v. HUGHES, 5 R. & G. N. S. R. 194.

146. **Stipendiary Magistrate for County** — APPOINTMENT FOR TOWN.]—Where a stipendiary magistrate was appointed for a town, his previous appointment having been for the county, objection was taken that his later appointment annulled the former :—Held, that under s.-s. 2 of sec. 131 of 59 Vict. ch. 44 (the Towns Incorporation Act under which the town was incorporated), the previous appointment being for the county and not for the parish was not annulled, and his jurisdiction remained. EX PARTE TAIT, 10 C. C. C. 513.

147. **Stipendiary Magistrate, City of Halifax.**]—Per Curiam, the stipendiary magistrate of the city of Halifax has jurisdiction to inquire of, and commit a prisoner for, an offence committed at McNab's Island, in Halifax Harbour, being a place beyond the city limits (but within the county). REGINA v. BROWN, 31 N. S. R. 401.

148. **Substituting New Charge** — IMPRISONMENT — HABEAS CORPUS — DISCHARGE.]—The defendant was brought before justices of the peace on an information charging him with an indictable offence of shooting with intent to murder, and they, not finding sufficient evidence to warrant them in committing for trial, of their own motion at the close of the case, summarily convicted the defendant for that he did "procure a revolver with intent therewith unlawfully to do injury to one J. S." It appeared by the evidence that the weapon was bought and carried and used by the defendant personally. By the Criminal Code s. 108, it is a matter of summary conviction if one has on his person a pistol with intent therewith unlawfully to do any injury to any other person. The return to a writ of habeas corpus shewed the detention of the defendant under a warrant of commitment based upon the above conviction; and upon a motion for his discharge :—Held, that the detention was for an offence unknown to the law; and although the evidence and the finding shewed an offence against s. 108, the motion should not be enlarged to allow the magistrates to substitute a proper conviction, for it was unwarrantable to convict on a charge not formulated, as to which the evidence was not addressed, upon which the defendant was not called to make his defence, and as to which no complaint was laid; and the prisoner should, therefore, be discharged. REGINA v. MINES, 25 O. R. 577.

149. **Summary Convictions and Other Proceedings.**]—If, in a prosecution before a justice of the peace, under the Highway Act, 5 Wm. IV. c. 2, the title to land comes in question, it must be gone into by the justice if he entertains the suit. REGINA v. BUCHANAN, 3 Kerr's, N. B R. 674.

150. **Summary Proceeding** — CANADA TEMPERANCE ACT — THIRD OFFENCE — INVALIDITY OF SECOND CONVICTION.]—The accused having been convicted of a third offence against the Canada Temperance Act, and on habeas corpus proceedings, it having been shown that the second conviction was invalid, the conviction for the third offence was quashed. KING v. MACDONALD, 5 C. C. C. 97.

151. **Summary Proceedings** — VIEW BY MAGISTRATE — CONVICTION QUASHED.] —The accused was charged under the Indian Act, with selling intoxicating to an Indian, and the magistrate after the evidence was in, took occasion to view the premises in the presence of the accused :—Held, that his action was an inherent defect in the course of legal procedure, something not warranted by law, and the conviction must be quashed. RE SING KEE, 5 C. C. C. 86. 8 B. C. R. 20, 21 Occ. N. 220.

152. **Summary Proceedings**—ADJOURNMENT SINE DIE — JURISDICTION OF JUSTICE.]—An adjournment sine die made by a justice or magistrate without a day being named on which judgment was to be delivered, renders any further proceeding nugatory, and a conviction afterwards made in the absence of the accused, is absolutely void for want of jurisdiction. R. v. QUINN, 2 C. C. C. 153.

153. **Summary Proceedings**—ADJOURNMENT OF HEARING — CONSTITUTIONAL LAW.]—Defendant was convicted before two justices of the peace for a violation of the Canada Temperance Act, and fined . A writ of certiorari was obtained to remove the conviction on the grounds of want of jurisdiction of justices to make said conviction :—Held, that jurisdiction is conferred upon justices of the peace who are appointed under the Provincial

Legislature to summarily try criminal offences. 2. That when justices are reasonably engaged in other official business, defendant must wait a reasonable time beyond the hour fixed for the hearing. Motion to quash conviction dismissed. REX v. WIPPER, 5 C. C. C. 17, 34 N. S. R. 202.

154. **Summary Trial by Police Magistrate with Consent** — OFFENCE OF HAVING CARNAL KNOWLEDGE — CHARGE OF LESSER OFFENCE.]—Accused was charged with having carnal knowledge of a girl under fourteen years before a police magistrate, and having consented to be tried summarily, under sec. 785 of the Code, was acquitted. A further information was laid under sec. 269 for indecent assault on the same occasion :—Held, that accused having consented to be tried summarily by a police magistrate, the trial was subject to the same rules of law as a trial at the general sessions of the peace. That, upon acquittal of accused on the charge, it was the duty of the magistrate to deliver to him a certificate of dismissal, and on a fresh information for a lesser offence on the same occasion, such certificate of dismissal would be a complete bar to an indictment under the plea of autrefois convict. REX v. CAMERON, 4 C. C. C. 385.

155. **Summary Trial** — INMATE OF HOUSE OF ILL-FAME.]—The jurisdiction given to magistrates by sec. 783 (f) of the Code provides that a person charged with being an inmate of a house of ill-fame, may be heard and tried in a summary way, and without consent of accused. Under Part LV. of the Crim. Code magistrates are empowered to impose imprisonment up to six months, and a fine not exceeding $100 including costs, even though a similar offence charged under the "summary convictions" clauses of being a "vagrant" the fine could not then exceed $50 in addition to imprisonment for six months. REX v. ROBERTS, 4 C. C. C. 253, 21 Occ. N. 314.

156. **Summary Trial** — CONSENT OF ACCUSED — COMMON ASSAULT.]—On consent of accused to be tried summarily under Code sec. 787, he was so tried and convicted of common assault only, though the information charged him with assault occasioning bodily harm :—Held, on motion to quash conviction, that the magistrate had jurisdiction under sec. 713 to convict him for an indictable offence as the offence under sec. 262 includes a common assault. The word "count" used in sec. 713 includes an information before a justice for an indictable offence. Motion dismissed. REX v. COOLEN, 8 C. C. C. 157, 36 N. S. R. 510.

157. **Summary Trial** — PRELIMINARY ENQUIRY — CODE SEC. 785.]—A stipendiary magistrate, not having the extended powers conferred by sec. 785 of the Code, and not being a stipendiary magistrate for a city or a police magistrate, but having authority under Code sec. 782 to hold a summary trial by consent for an indictable offence, must proceed in the first place as on a preliminary enquiry and if satisfied that the evidence justifies the accused being put on his trial, he may proceed with a summary trial under Code sec. 789. REX v. WILLIAMS, 10 C. C. C. 330, 2 W. L. R. 410.

158. **Summons** — PROOF OF SERVICE TO INMATE OF DEFENDANT'S PLACE OF ABODE.]—On application by way of certiorari to quash a conviction on the ground of insufficient proof of service of summons. Upon evidence that a copy of the summons was left with an adult person at the defendant's residence, but no proof that adult person was an inmate of the defendant's usual place of abode, and no effort having been made to serve the defendant personally :—Held, that the service was insufficient. RE BARRON, 4 C. C. C. 465, (P. E. I.).

159. **Summons** — NO PROOF OF SERVICE — CONVICTION WITHOUT FURTHER EVIDENCE.]—The accused failed to attend and answer to a charge of vagrancy, whereupon the justice proceeded with the hearing without it having been proved that the summons had been duly served, and after taking evidence issued a warrant of arrest. At the next hearing the prisoner was found guilty without further evidence :—Held, such irregularities constituting an excess of jurisdiction are sufficient to annul the conviction. REX v. LEVESQUE, 8 C. C. C. 505, 6 Que. P. R. 64.

160. **Summons** — WARRANT — AUTHORITY.]—Complaint under oath of an assault was made before a justice, on which he issued a summons, and defend-

ant not appearing, the justice, on proof of service of the summons, issued the warrant (B) under the Summary Convictions Act of Canada, 32 & 33 Vict. cap. 31, upon which the defendant was arrested, brought before the justice and convicted —protesting against proceedings :—Held, that as there was a complaint under oath, the justice had authority to issue the warrant in the first instance, and that having used the form (B) instead of (C) did not make the arrest illegal, and that he had power to convict, though the summons served was defective in not stating the day the defendant was to appear. REGINA v. PERKINS, Trin. T., 1872, N. B.

161. **Suspended Sentence.**]—Under sec. 971 a justice has jurisdiction, where the offence is punishable with not more than two years' imprisonment, and no previous conviction is proved against the accused, to direct that he be released on his recognizance to keep the peace, with or without sureties. R. v. MCLENNAN, 10 C. C. C. 1.

162. **Territorial Jurisdiction** — ACT FOR PROTECTION OF SHEEP — OFFENCE AGAINST — LOCALITY OF — OWNING VICIOUS DOGS — ORDER FOR DESTRUCTION — ORDER FOR DAMAGES — INFORMATION — QUASHING ORDER — COSTS.]—Upon a motion to quash an order of a justice of the peace for the county of Waterloo under ss. 11-13 of R. S. O. 1897, c. 27. an Act for the Protection of Sheep and to impose a tax on dogs, finding that the defendant, at the town of Waterloo, did unlawfully have in his possession two dogs, which dogs worried and injured two sheep, the property of the complainant, at the township of Wellesley, and ordering the defendant to kill the dogs :—Held, that the offence under s. 11 was the having in possession a dog which ,wherever the act was done, had worried, injured, or destroyed sheep, and therefore the offence was committed at the town of Waterloo, where the defendant lived, and a magistrate for the county had no jurisdiction, there being a police magistrate for the town, and it not appearing that the convicting magistrate was acting for or at the request of such police magistrate. Upon the same information the same magistrate also made an order, under s. 15 of the Act, for the payment by the defendant to the complainant of 10 per cent. (said to be the value of the sheep) and costs :—Held, that a proceeding under ss. 15 is independent of one under ss 11-13, and the magistrate had no power to award damages for the injury to the sheep, without a separate complaint. The first order was quashed without costs, because the question of the magistrate's jurisdiction was not raised before him, and the assuming jurisdiction was his mistake. The second order was quashed with costs to be paid by the complainant, because he insisted on going on with the claim for damages before the magistrate. REX v. DUERING, 21 Occ. N. 588, 2 O.L.R. 593.

163. **Territorial Jurisdiction** — DOGS KILLING SHEEP — LOCALITY OF CRIME.]—Except in the illness, absence or at the request of a police magistrate for an incorporated town, a justice of the peace has no jurisdiction to try an offence under the Ontario Sheep Protection Act of possessing a dog which has worried sheep, and on the trial of the complaint of possessing dogs which have killed sheep an order for damages for the killing of the sheep cannot be made. If, however, a justice of the peace has jurisdiction in the district in which the sheep were killed, he may try a complaint under the statute for the recovery of damages. REX v. DUERING, 5 C. C. C. 135, 2 O. L. R. 593.

164. **Territorial Jurisdiction.**]—R. S. O. 1877, c. 72, s. 6, does not limit the territorial jurisdiction of county magistrates. but prohibits them from acting "in any case for any town or city"—the limitation is as to the cases, not as to place, and is only partial, i.e., for a city where there is a police magistrate to act, or when he is not absent through illness or otherwise; and therefore in any case arising in a county, outside of a city, a county justice having jurisdiction to adjudicate while sitting in the county, may adjudicate while sitting in the city. Legislation on the subject reviewed. Owing to changes in the statute law the decisions in Regina v. Row, 14 C. P. 307, and Hunt v. McArthur, 24 U. C. R. 254, are no longer applicable. REGINA v. RILEY, 12 P. R. 98.

165. **Territorial Jurisdiction.**]—A warrant of commitment was made by the stipendiary magistrate for the police division of the municipality of the county of Pictou, in Nova Scotia, upon a conviction for an offence stated therein to

have been committed "at Hopewell, in the county of Pictou." The county of Pictou appeared to be of a greater extent than the municipality of the county of Pictou, there being also four incorporated towns within the county limits—and it did not specifically appear upon the face of the warrant that the place where the offence had been committed was within the municipality of the county of Pictou. The Nova Scotia statute of 1895 respecting county corporations (58 Vict. c. 3, s. 8) contains a schedule which mentions Hopewell as a polling district in Pictou county entitled to return two councillors to the county council :—Held, that the court was bound to take judicial notice of the territorial divisions declared by the statute as establishing that the place so mentioned in the warrant was within the territorial extent of the police division. Held, also, that the jurisdiction of a Judge of the Supreme Court of Canada in matters of habeas corpus in criminal cases is limited to an inquiry into the cause of imprisonment as disclosed by the warrant of commitment. Ex Parte Macdonald, 27 S. C. R. 683.

166. **Theft by Agent** — Continuation and Completion of Act in Another District.]—Sec. 553 of the Crim. Code enacts that when an offence is begun within one magisterial jurisdiction and completed within another, such offence may be considered as having been committed in either of them. Where on a charge of fraudulent conversion, the act began in one district and continued and was completed in another, the accused may be proceeded against in either. Regina v. Hogle, 5 C. C. C. 53.

167. **Third Offence** — Improper Admission of Evidence.]—A conviction for a third offence under the Ontario Liquor License Act, must be dealt with under section 101, to which section 115 of the Canada Temperance Act is identical, and until accused is found guilty of the later offence the magistrate has no jurisdiction to enquire concerning previous offences. There is no remedy provided by law to annul evidence obtained contrary to said sec. or to restore the jurisdiction of the magistrate. Rex v. Nurse, 8 C. C. C. 173, 7 O. L. R. 418.

168. **Three Justices Sitting** — One Assuming to Convict.]—S., a justice of the peace, upon an information laid before him, issued a summons for non-payment of wages under C. S. U. C. c. 75, s. 12, returnable before himself or such other justices as might then be present. On the return the two other justices were present who, without any objection from S., heard the complaint with him. At the conclusion of the case these two thought the complaint should be dismissed, while S. was in favour of the claimant, and against the protest of the other two, S. made an order requiring the defendant to pay the claim and costs, and in default that a distress should issue; the other two justices made an order dismissing the complaint. Subsequently, a formal conviction was drawn up, and signed and sealed by S., the whole proceedings being set out as before him alone, and afterwards a distress warrant was issued by him. The minutes of the evidence taken down by the magistrate's clerk, were headed as in a cause before the three justices :—Held, that the conviction was clearly bad, and must be quashed, S. having no exclusive right to deal with the case merely because he had issued the summons. Regina v. Milne, 25 C. P. 94.

169. **Trespass** — Injury to Property — Supposition of Right.]—Jurisdiction is given to a justice of the peace to try in a summary way, a charge for unlawfully trespassing under sec. 1 of R. S. O. ch. 120; and the same jurisdiction is given in respect of a charge for willfully damaging any real or personal property, under sec. 511 of the Crim. Code, but the jurisdiction is withheld in both sections if the person charged "acted under a fair and reasonable supposition that he had the right to do the act complained of". Regina v. Davy, 4 C. C. C. 28, 27 A. R. 508.

170. **Trespass** — Warrant of Commitment — Necessity for Two Justices — Habeas Corpus — Certiorari.] —The prosecutor charged the petitioner before a justice of the peace with having cut wood upon his property. The petitioner took no notice of the summons served upon him, and the justice convicted him and ordered him to pay a fine of $5 and costs and upon default to be imprisoned for 15 days at hard labour. A warrant of commitment was issued by the justice under s. 783 of the Criminal Code, and the petitioner was imprisoned.

He obtained a habeas corpus and certiorari in aid, alleging that a single justice of the peace cannot issue a warrant of imprisonment, and that the conviction was illegal :—Held, that a single justice has no jurisdiction to issue a commitment under s. 783. 2. When it appears on the face of the conviction that the justice has exceeded his jurisdiction a certiorari in aid is not necessary. 3. In such a case the writ of habeas corpus was maintained and the conviction and the commitment were quashed. COTE v. DURAND, Q. R. 25 S. C. 33.

171. **Trespass** — WANT OF JURISDICTION — REASONABLE AND PROBABLE CAUSE — COSTS AGAINST JUSTICES.]—The defendant, a justice of the peace, issued a warrant to arrest the female plaintiff on the information stating that she did "unlawfully take and carry away from his (the informant's) protection her daughter S. W." The justice preferred to act under the Dominion Statutes 32 & 33 Vict. c. 20, s. 56 :—Held, in an action for assault and false imprisonment, that the defendant had no jurisdiction to issue a warrant on this information, and was liable to an action of trespass, and that the question of reasonable and probable cause can only arise where the justice has jurisdiction over the matter. STILAS v. BREWSTER, 4 All. N. B. R. discussed.

Quære, whether the Dominion Act 23 & 33 Vict. c. 29, s. 134, relating to costs in actions against justices, is not ultra vires the Federal Parliament. WHITTIER AND WIFE v. DIBLEE, 2 Pug., N. B. R. 243.

172. **Trespass on Railway Track.**]—Section 283 of the Railway Act of Canada 51 Vict. ch. 29, authorizes a railway constable to "take" such persons as are punishable by summary conviction for offences against the provisions of that Act, before any justice or justices for any county, etc., within which such railway passes, and gives jurisdiction to such justice or justices to deal with all such cases, as though the offence had been committed and the person taken within the limits of his own jurisdiction. Defendant was not arrested, but was summoned and brought before the justice. Objection was taken to the conviction for want of jurisdiction on the part of the justice, owing to the offence having been committed within the city of Toronto, for which there was a police magistrate :—Held, that sec. 283 applies only where the constable "arrests" an offender and takes him before a justice of the peace. Conviction quashed. REGINA v. HUGHES, 26 O. R. 486, 2 C. C. C. 332.

173. **Trial by Police Magistrate** — "SUMMARY TRIAL".]—In the Province of Nova Scotia, a magistrate having the powers of two justices of the peace may try a charge of resisting a peace officer, only by following the procedure of Part LV. as to "summary trials", and that only upon consent of the accused under Code sec. 786. REX v. CARMICHAEL, 7 C. C. C. 167.

174. **Two Justices Necessary.**]—Where a statute empowers two justices to convict, a conviction by one is void. IN RE CROW, 1 C. L. J. 302. See also GRAHAM v. MCARTHUR, 25 U. C. R. 478.

175. **Two Justices Sitting Together.**]—The jurisdiction of a magistrate is absolute in British Columbia, Prince Edward Island and in the district of Keewatin, under Crim. Code sec. 784 (3) in cases of summary trial for theft under $10, without the consent of accused. The word "magistrate" is declared in sec. 782 (a. 3) to mean and include any two justices of the peace sitting together, and an appeal shall lie from a conviction in the same manner as from summary convictions under Part LVIII., and section 879 and the following sections relating to appeals from such summary convictions shall apply to such appeal. REGINA v. WIRTH & REED, 5 B. C. R. 114, 1 C. C. C. 231.

176. **Two Parties Acting** — AUTHORITY TO ONE.]—An authority given to one justice to recover penalties may be exercised by two. EX PARTE DUNLAP, 3 All., N. B. R. 281.

177. **Unsworn Warrant** — ILLEGAL ARREST — JURISDICTION OF MAGISTRATE.]—A justice of the peace can only legally arrest an offender by a warrant issued upon sworn information, unless he sees a felony or other breach of the peace committed in his presence, when he may in his own person apprehend him, or personally acting in making the arrest may call some one to his assistance. MCGUINESS v. DAFOE, 3 C. C. C. 139, 27 O. R. 117.

178. **Want of Jurisdiction** — Remedy of Certiorari and Appeal.]—On an appeal from the judgment of a justice of the peace in a civil action of debt, refusing an application for a writ of certiorari on the grounds of want of jurisdiction :—Held, that remedy by certiorari is not to be denied to redress the grievance caused by the justice entering up judgment without proof of debt, when there is neither no remedy by appeal, or if the remedy by appeal is neither appropriate or adequate. Certiorari granted. On raising the question of want of jurisdiction, certiorari is the proper remedy, and the right to certiorari should not be refused because a new trial by means of appeal might be obtained, nor should it be refused even where an appeal is pending. Re Ruggles 5 C. C. C. 163, 35 N. S. R. 57.

179. **Want of Jurisdiction.**]—A conviction should be quashed where there is no jurisdiction. Regina v. Taylor, 8 U. C. R. 257.

180. **Warrant** — Execution of — Action Against Constable.]—No action lies against a constable for the execution of a warrant, however defective, where the magistrate issuing the warrant has jurisdiction. McGregor v. Patterson, 1 Old. N. S. R. 211.

181. **Warrant.**]—Semble, that a warrant issued by a justices of the peace sitting in quarter sessions having no seal does not make it invalid. Fraser v. Dickson, 5 U. C. R. 231.

182. **Warrant.**]—Semble, that the warrant issued in this case after the dismissal of the appeal by the sessions, and 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. Arscott v. Lilley, 11 O. R. 153.

183. **Warrant.**]—Where a conviction is affirmed on appeal to the sessions the warrant of distress or commitment may be issued by the convicting justice. Arscott v. Lilley, 14 A. R. 283.

184. **Warrant.**]—A warrant of commitment need not be dated if not issued too soon. Regina v. Sanderson, 12 O. R. 178.

185. **Warrant.**]—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. c. 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 in January, 1888, the motion was enlarged accordingly. Regina v. Lavin, 12 P. R. 642.

186. **Warrant of Apprehension** — Affidavit of Service of Summons.]—The jurisdiction of a magistrate to issue a warrant under R. S. C. c. 178, s. 39, for the apprehension of a person who does not appear to a summons does not depend upon an affidavit being made by the person who served the summons; it is sufficient that it appear to the satisfaction of the magistrate that the summons was served within a reasonable time. Read v. Hunter, 8 C. L. T. Occ. N. 428.

187. **Warrant of Arrest by a Person not Legally Qualified.**]—Defendant was convicted and fined for selling liquor without license, and upon motion for a rule nisi upon the magistrate to show why a writ of certiorari should not issue, on the grounds that his arrest was executed by an unqualified person :—Held, that if the defendant is brought before the magistrate, and the magistrate has jurisdiction over the offence and person, the improper arrest does not go to the jurisdiction of the magistrate, and he may proceed with the hearing. Rule refused. Ex Parte Giberson, 4 C. C. C. 537, 34 N. B. R. 538.

188. **Witness, Arrest, etc.**]—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 re-arrested by the 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 jail :—Held, (1) That as the magistrate had jurisdiction to enter on the inquiry as to the fact of the proclamation of the Act, and whether licenses were outstanding or not, he had authority to compel the witnesses to attend. (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 showing a previous arrest and an escape, the defendants might lawfully enter the house in fresh pursuit. (3) That the placing of the plaintiff in jail under the circumstances was justifiable. (4) That section 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., 6 R. & G., N. S. R. 237, 6 C. L. T. 444.

189. **Witness Refusing to Answer Question.**]—Under sec. 585 of the Criminal Code, when a witness refuses to answer a question put to him without offering any just excuse, the justice may adjourn the proceeding and commit the witness to gaol for contempt, but in order to justify the commitment under this section, it must be proved that the question was relevant to the case, and that the witness had no just excuse for such refusal. RE AYOTTE, 9 C. C. C. 133, 1 W. L. R. 79.

IX. QUALIFICATION OF JUSTICE.

1. **Appointment and Qualification** — MAGISTRATE GIVING EVIDENCE.]—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.

2. **Appointment and Qualification** — PROPERTY.]—C. S. U. C. c. 100, s. 3, prescribing the qualification of justices, does not require them to have a legal estate; it is sufficient if the land, though mortgaged in fee, exceed by $1,200 the amount of the mortgage money. FRASER Q. T. v. McKENZIE, 28 U. C. R. 255.

3. **Appointment and Qualification.**]—In a qui tam action against the defendant for acting as a justice of the peace without sufficient property qualification, where the evidence offered by plaintiff as to the value of the land, and premises on which defendant qualified was vague, speculative and inconclusive, one of the witnesses, in fact, having afterwards recalled his testimony as to the value of a portion of the premises, and placed a higher estimate upon it; while the evidence tendered by the defendant was positive, and based upon tangible data :—Held, that the jury were rightly directed, "that they ought to be fully satisfied as to the value of defendant's property before finding for the plaintiff; that they should not weigh the matter in scales too nicely balanced; and that any reasonable doubt should be in favour of the defendant." Observations on the principle of the valuation of land with a view to determining the property qualification of justices. SQUIRE Q. T. v. WILSON, 15 C. P. 284.

4. **Appointment and Qualification.**]—In a qui tam action against defendant for acting as a justice of the peace without the necessary property qualification required by R. S. O. 1877 c. 71, s. 7, the defendant was called as a witness on his own behalf and gave evidence as to the value of the property on which he qualified, and the learned Judge in charging the jury told them that, generally speaking, the owner of property had the best opinion of its value :—Held, there was no misdirection; for that the jury were not told that they were to be guided by such opinion, or that it was most likely to be correct. CRANDELL Q. T. v. NOTT, 30 C. P. 63.

In a penal action, where the jury find for the defendant, a new trial will not be granted merely because the verdict may be deemed to be against the evidence or weight of evidence; but it is otherwise where the verdict is in contravention of the law, arising either from the misdirection of the Judge, or from a mis-

apprehension of the law by the jury, or from a desire on their part to take the law in their own hands. Where, therefore, in such qui tam action, which is looked upon as a penal action, the jury, though greatly overvaluing the property, found for defendant, but none of the above considerations arose, a new trial was refused. IB.

Semble, that the ownership of an equitable estate in land is sufficient to enable the owner to qualify thereon under the statute. IB.

Where, however, a husband caused certain land to be conveyed to his wife by deed, absolute as between them, and without any declaration of trust in his favour :—Held, that though the conveyance might be void as against his creditors, yet that the husband could not qualify on the land, for, as far as he was concerned, the absolute property therein was, by his own act, vested in his wife. IB.

It was urged in term that the jury in the finding had treated defendant as the sole owner of a certain part of the property, where as it was owned by himself and son as tenants in common, and that his moiety was not of sufficient value. At the trial the deed of the father and son was produced, without the point as to the tenancy in common being taken, and it was proved that the son had afterwards joined with the father in a mortgage of the land :—Held, that the objection could not be entertained, for if taken at the trial, such an explanation might have been given as would have shewn there was no foundation for it; but, even if such ownership did exist, the question of value being for the jury, it could not be assumed that in estimating such value they had disregarded the point. IB.

5. **Appointment and Qualification** — TAKING OBJECTION.]—The court refused to quash a conviction under the Canada Temperance Act, 1878, on the ground that one of the convicting magistrates had not the necessary property qualification, the defendant not having negatived the magistrate's being a person within the terms of the exception or proviso of s. 7, R. S. O. 1877, c. 71. REGINA v. HODKINS, 12 O. R. 387.

6. **Appointment and Qualification** — RATEPAYER OF MUNICIPALITY TO WHICH FINE PAYABLE — PAYMENT OF SALARY.]—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. 1887, c. 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 disqualification at common law. REGINA v. FLEMING, 27 O. R. 122.

7. **Appointment and Qualification** — PROVINCIAL JURISDICTION.]—Held, that the Legislature of the Province of Ontario had power under No. 14 of s. 92 B. N. A. Act, to pass R. S. O. 1877, c. 71, providing for the qualification and appointment of justices of the peace. REGINA v. BENNETT, 1 O. R. 445.

8. **Appointment and Qualification** — OATH.]—Under C. S. U. C. c. 100, s. 3, the oath of qualification by a justice of the peace must be taken before some justice of the peace of the county for which he intends to act. It cannot be administered by the clerk of the peace for such county, under the writ of dedimus potestatem issued with the commission of the peace. HERBERT Q. T. v. DOWSWELL, 24 U. C. R. 427.

9. **Bias** — RELATIONSHIP TO PROSECUTOR — DISQUALIFICATION.]—The complainant, by the provisions of the Fisheries Act, under which the complaint was laid, was entitled to one half the fine. The convicting justice was the father of the prosecutor. The defendant objected to the justice trying the case :—Held, that where a state of things exists, whether arising from relationship of the parties or from other causes, which is likely to create a bias, even though it be an unconscious one, in the magistrate, in favor of one of the parties, or which causes a reasonable apprehension of bias, it is sufficient to prevent the justice from adjudicating, if it be impeached by a party who had no knowledge of the existence of such a state of things, or knowing it, objected to the justice acting. That it is of the highest importance in the general interest of justice, to keep its administration by magistrates clear from all

suspicion :—Held, further, that it is not sufficient that there be a mere possibility of bias, nor on the other hand is it necessary that real bias be proved—a likelihood of real bias or a reasonable apprehension of bias is sufficient. Held on the facts, that the conviction must be quashed, and the fact that there was no conflict of testimony did not affect the principle. R. v. STEELE, 2 C. C. C. 433, 26 O. R. 540.

10. **Bias** — RELATIONSHIP.]—The fact that the niece of a magistrate, who determined and entered a conviction against the defendant for an infraction of the Liquor License Act (N. B.), happened to be the wife of the assistant License Inspector, is not in itself sufficient to raise any reasonable ground or suspicion of bias to disqualify the magistrate from acting, where the assistant had nothing to do with the prosecution. The fact of a justice being a ratepayer in the county where he presides is no ground for disqualification. Where the conviction is extended and itself drawn at the time when the minute of adjudication should have been made, and in lieu of it, it is sufficient without any formal or other minute of adjudication. Where the magistrate himself was called as a witness for the defendant and refused to be sworn, if advantage is sought to be taken of such refusal, it should be made apparent to the court, that he was required bona fide as a witness, that he could give evidence material upon the question it was proposed to interrogate him upon, and that the party complaining has been prejudiced by the refusal. EX PARTE FLANNAGAN, 2 C. C. C. 513, 34 N. B. R. 326.

11. **Bias** — ACTION AGAINST JUSTICE.] —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 enquire 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.

12. **Disqualification from Sitting** — RELATIONSHIP.]—Without deciding what degree of relationship, if any, disqualifies a Judge from sitting on a case, the affinity arising from the fact that the presiding stipendiary magistrate and the prosecutor, an inspector under the Liquor License Act, married sisters, does not. Quære, will anything but interest in the matter at issue disqualify? REGINA v. MAJOR, 29 N. S. R. 373.

13. **Disqualification of Justice** — RELATIONSHIP.]—A magistrate is not disqualified from hearing an information under the Summary Convictions Act by reason of the defendant's wife being the widow of a deceased son of the magistrate. EX PARTE WALLACE, 26 N. B. R. 593.

14. **Disqualification** — INTEREST.]— Justices of the peace, who belong to an association (a temperance alliance) of which the president is the party prosecuting, and the fine to be imposed on the accused will ultimately be paid over to said association, have no jurisdiction, and are prevented from acting on account of interest sufficient to disqualify them. DAIGNEAULT v. EMERSON, Q. R. 20 S. C. 310.

15. **Disqualification by Interest.**]—The defendant was convicted before F. A. Laurence, stipendiary magistrate presiding in the town court of Truro, of selling intoxicating liquors contrary to law. The stipendiary magistrate was a ratepayer of the town and received a fixed salary as stipendiary, payable out of the funds of the town to which half the penalty imposed became payable. :—Held, that the magistrate was disqualified by interest from acting in the matter. TUPPER v. MURPHY, 3 R. & G. N. S. R. 173.

16. **Disqualification by Interest.**] — Appeal from order of sessions of Kings County setting aside an order of settlement by overseers of poor for Granville, after notice of preliminary objection by the latter. Per Sir William Young, C. J., evidence having been given before the court on the preliminary objections in the notice of proof, that several justices of the peace residing in the township of Cornwallis, and liable to be assessed therein for the support of the poor, took part in the appeal against the order of the overseers for Granville, and voted on the determination thereof, and it appearing to this court that in consequence of such interposition, the court of sessions was not duly constituted for the hearing of such appeal, decision therein is hereby reversed and judgment given for the

respondents therein. Broom's Legal Maxims, 118, 127; 1 Q. B. 267; 6 Q. B. 753. OVERSEERS OF POOR FOR CORNWALLIS V. OVERSEERS OF POOR FOR GRANVILLE. Unreported, 1871 (N.S.).

17. **Disqualification by Relationship — CONVICTION QUASHED.**]—Conviction for cruelty to animals quashed, one of the justices being the father of the complainant. IN RE D. BARY HOLMAN, 3 R. & G. N. S. R. 375.

18 **Interest.**]—Attachment lies against commissioners of courts of requests who try causes in which they have an interest, though remote. REX V. MCINTYRE, Tay. O. R. 22.

19. **Disqualification.**] — Disqualification of magistrate giving a certificate of loss under fire policy, as being concerned in the loss. See MCROSSIE V. PROVINCIAL INS. CO., 34 U. C. R. 55.

20. **Disqualification.**]—The solicitor of the husband being city recorder, was held not to be disqualified to take as a magistrate the examination of a married woman for the conveyance of her lands. ROMANES V. FRASER, 17 Gr. 267, s. c. 16 Gr. 97.

Magistrates interested in the transaction, are not competent to take the examination of a married woman for the conveyance of her land. IB.

The solicitor of the husband is not as such disqualified. IB.

21. **Disqualification.**]—The cases relating to disqualification by reason of favour or interest in a judge or magistrate discussed. REGINA V. KLEMP, 10 O. R. 143.

22. **Disqualification.**] — The defendant was convicted of having unlawfully assaulted the complainant, who was the daughter of the convicting justice, where the only evidence was, that the prisoner had, in company with one Spragge, gone to the complainant's house, at about the hour of ten o'clock p.m., and Spragge had knocked at the door and told complainant that he desired to introduce the defendant, whereupon the complainant replied that they had come to insult her, and that she would have them both arrested in the morning :—Held, that it was improper for the justice to sit and try the case, the complainant being his daughter; and that this was a good ground for quashing the conviction. REGINA V. LANGFORD, 15 O. R. 52.

23. **Disqualification.**]—The justice of the peace before whom the information was laid, and who issued the summons, was alleged 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. REGINA V. STONE, 23 O. R. 46.

24. **Disqualification from Interest — RELATIONSHIP.**]—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 favor of one of the parties. It is not a ground for 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. REGINA V. GRIMMER, 25 N. B. R. 424.

25. **Interest.**]—Where the convicting justice was the son of the complainant, and the latter was entitled to one-half the penalty imposed, a summary conviction was quashed, on the ground that the justice had such an interest as made the existence of real bias likely, or gave ground for a reasonable apprehension of bias, although there was no conflict of testimony. Regina v. Huggins, (1895) 1 Q. B. 563, followed. Dictum in Regina v. Langford, 15 O. R. 52, approved. Costs of quashing conviction withheld from successful defendant, where he filed no affidavit denying his guilt, or casting doubt upon the correctness of the magistrate's conclusion upon the facts. REGINA V. STEELE, 26 O. R. 540.

26. **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 costs. Regina v. Chapman, 1 O. R. 582.

27. **Interest.**]—The interest of a justice of the peace in property in respect of which he qualifies as such, as required by R. S. O. 1887 c. 71, s. 9, need not be in itself of the value of $1,200. It is sufficient if he has, in lands which are of the value of $1,200, over and above all rents and charges payable out of or affecting the same, such an estate or interest as is mentioned in the section, whatever the value of the estate or interest may be. Weir v. Smyth, 19 A. R. 433.

28. **Interest in Prosecution by Reason of Salary Drawn from Consolidated Rev. Fund.**]—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 consent of the Lieutenant-Governor-in-Council is obtained before or after the resolution. Regina v. Hart, 2 B. C. R. 264.

29. **Road** — Laying Out of — Freeholders.]—Three magistrates, forming a part of the court of sessions, by whom the return of a precept issued under cap. 62 of the Revised Statutes, 3rd Series, for laying out a road, is to be decided, are not the three disinterested freeholders contemplated by that Act. Regina v. Chipman, 2 Thom. N. S. R. 292.

30. **Stipendiary Magistrate Who is also a J. P. can Act as such Under Canada Temperance Act.**]—The stipendiary magistrate of New Glasgow sat as a justice of the peace with another justice to try a case under the Canada Temperance Act, which provides that trials may be had before a stipendiary magistrate or any two other justices of the peace for the county :—Held, that no disqualification was intended by the word "other", and that the conviction was good. Regina v. Graham, 6 R. & G. N. S. R. 455, 6. C. L. T. 537.

X Review or Appeal

1. **Appeal** — Action Against Justice for Refusing]—Plaintiff brought an action against a magistrate for maliciously refusing an appeal; but, on his direct examination, stated merely that he had demanded an appeal, and that nothing further was said. Defendant swore that he did not hear the appeal demanded. Plaintiff's attorney swore that in the defendant's presence he had asked plaintiff if he had not offered to make the affidavit and demand an appeal, to which plaintiff replied that he had done so. The jury in answer to the question whether the justice had been required to prepare an affidavit said "yes", and in answer to the question whether the justice had acted with malice replied, "apparently" : and they found a verdict for plaintiff. A rule being granted the verdict was set aside. McKenzie v. McKay, 3 R. & G. N. S. R. 122.

2. **Appeal** — Affidavit.]—The affidavit for appeal from a justice of the peace, in civil cases, must be made before the justice who tried the cause. Curry v. Lecras, 4 R. & G. N. S. R. 31.

3. **Appeal** — Affidavit for — Power of Judge of County Court to Allow Amendment of Affidavit]—The affidavit for appeal from the Magistrate's Court was defective, not being headed in the cause, and the words "before me" being omitted from the jurat. The Judge of the County Court was satisfied that the defects occurred through inadvertence, and without the fault of the appellant, and without any intention to evade the requirements of the statute, but dismissed the appeal on the ground that he had no

power to amend the affidavit:—Held, that he had such power. WOODWORTH v. INNIS, 6 R. & G. N. S. R. 295, 6 C. L. T. 440.

4. **Appeal** — ALLOWANCE OF]—When one of the magistrates before whom a case was tried stated that all the papers necessary for perfecting the appeal had been filed, accepted the bond, telling the party it was all right, the court allowed the appeal, though no affidavit had been filed. MCKAY v. MCKAY, 2 Thom. N. S. R. 75.

5. **Appeal** — COSTS OF MOTION.]—After the removal of a conviction in to the High court, the convicting magistrate moved to have an affidavit filed by the defendant, removed from the files of the court, which was refused with costs payable by the magistrate to the defendant. Subsequently, under the belief that ss. 897 and 898 of the Code applied, the defendant obtained an ex parte order varying the previous order by making the costs payable to the clerk of the peace and then to the defendant, and an appeal from such amended order by the magistrate to the judge sitting in weekly court, was dismissed. The magistrate then appealed to the Divisional Court from the order of the justice of the weekly court, and, also, by leave, direct from the above amended order, when the former appeal was dismissed and the latter allowed. A Judge sitting in weekly court has no jurisdiction to entertain an appeal from an order of a judge of the High Court made in a criminal proceeding. REGINA v. GRAHAM, 29 O. R. 193.

6. **Appeal** — ORDER QUASHING CONVICTION.]—No appeal lies to the court of appeal for Ontario from an order of Divisional Court quashing a conviction by a police magistrate for breach of a municipal by-law. REGINA v. CUSHING, 26 A. R. 248.

7. **Appeal** — COSTS — COMMITMENT.]—The issuing of a warrant of commitment for non-payment of costs of an appeal, under 32 & 33 Vict. c. 31, s 75, is discretionary, not compulsory upon a justice; and the court will therefore on this ground, as well as upon the ground that the party sought to be committed has not been made a party to the application, refuse a mandamus to issue it, if this be the proper remedy, which in this case it was held not to be, but that the application should have been under C. S. U. C. c. 126, s. 8. RE DELANEY, v. MACNABB, 21 C. P. 563.

8. **Appeal** — EFFECT OF.]—The 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 32 & 33 Vict. c. 31, s. 71, (D.), does not take away the right to certiorari in such a case. MCLELLAN v. MCKINNON, 1 O. R. 219.

9. **Appeal from County Court to Supreme Court in Cause Originating Before Justices.**]—The court declined to entertain an appeal from the County Court in a cause originating in the Magistrate's Court, where the appeal was taken upon filing security and not "granted" by the Judge within the meaning of sec. 8 of cap. 20, 1879. MATHESON v. MCLEAN, 2 R. & G. N. S. R. 176, 1 C. L. T. 664.

10. **Appeal from Decision of Justices of the Peace.**]—Defendant was prosecuted under chap. 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, 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 facto ipso 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 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. Per Wilkins, J., dissenting. A judgment given as the judgment in this case was, forms no exception to the privilege of appealing

conferred by the statute, and to issue a certiorari would have been unnecessary. Judgment by default having been given, defendant not having been duly summoned to appear, is entitled to an appeal. The want of service of the summons alone is ground for reversing the judgment below. A dissatisfied party appealing from a judgment so entered cannot be held to waive his right to contest the validity of the judgment not having had an opportunity of opposing the claim which the judgment recognizes. RAND v. ROCKWELL, 2 N. S. D. 199.

11. **Appeal.**]—Appeal from judgment in an action by a warden of river fisheries for recovery of penalty for infringement of regulations made by sessions under cap. 95 Revised Statutes (1st Series), must be to sessions. (See Vict. 16, cap. 17, under which the proceedings in this case were taken. GOUGH v. MORTON, 2 Thom. N. S. R. 10.

12. **Appeal from Magistrates' Court** — MISCONDUCT OF MAGISTRATE — AFFIDAVIT FOR APPEAL — BEFORE WHOM MADE.]—Defendant demanded an appeal from a judgment given against him by two justices of the peace and tendered the proper fees to one of the justices for preparing the statutory affidavit for an appeal. The affidavit was prepared but was sworn to without having been signed, and the magistrate at once issued execution under which defendant was arrested. Defendant made an affidavit for appeal before a magistrate who had taken no part in the trial, and the Judge of the county court district No. 1, set aside the judgment of the magistrates and quashed the summons and all proceedings thereunder. Plaintiff having appealed :—
Held, that the appeal must be allowed. Misconduct of the magistrate cannot give an appeal independently of the statute. The statute gives no authority to any magistrate to prepare the affidavit other than the one who has heard the cause. MOIR ET AL v. RAMSAY, 6 R. & G. N. S. R. 126.

13. **Appeal** — NONE TO SUPREME FROM COUNTY COURT, WHEN CAUSE ORIGINATES BEFORE JUSTICES.]—Cases appealed from the Magistrates' Court to the County Court cannot be brought by appeal to the Supreme Court. COCHRAN v. LARCOM, 3 R. & C. N. S. R. 480.

14. **Appeal** — NONE TO SUPREME COURT FROM COUNTY COURT IN MAGISTRATES' CASES.]—The court will not hear an appeal from the county court in a cause originating in the magistrates' court. COOLAN v. McLEAN, 3 R. & C. N. S. R. 479.

15. **Appeal** — NONE DIRECT TO SUPREME COURT.]—No appeal lies directly to the Supreme Court from an order of justices for the removal of paupers. Even in a regular appeal new evidence cannot be taken in this court. Construction of Rev. Stats. (2nd Series), c. 89, s. 14. OVERSEERS OF THE POOR FOR GREENFIELD v. OVERSEERS OF THE POOR FOR GOSHEN, 1 Old., N. S. R. 695.

16. **Appeal** — NON-SUIT — NO WITNESSES BELOW.]—The court will not allow an appeal from a judgment of non-suit in justice's court when no witnesses have been produced by the plaintiff on the trial below. McCULLY v. BARNHILL, Cochran's, N. S. R. 81.

17. **Appeal.**] — Objections by appellant to the regularity of proceedings before justices must be brought to the notice of the court during the first four days of the term, and before the cause comes on for trial. GRAHAM v. LAPIERRE, James, N. S. R. 139.

18. **Appeal** — OFFENCE UNDER PROVINCIAL STATUTE — SUMMARY CONVICTION — CRIM. CODE SEC. 879.]—Under Crim. Code sec. 879 an appeal from a summary conviction in the Province of Quebec to the Court of Queen's Bench, cannot be taken where the offence is against a provincial statute, but only when the offence charged is one over which the Parliament of Canada has legislative authority. LECOURS v. HURTUBISE, 2 C. C. C. 521, Q. R. 8 Q. B. 439.

19. **Appeal** — PERSON AGGRIEVED — R. S. O. 1897.]—Under the Ontario Summary Convictions Act, R. S. O. 1897, ch. 90, sec. 7, any person who considers himself aggrieved by a conviction or order of a justice of the peace under any statute in force in Ontario, and relating to matters within the legislative authority of the Legislature of Ontario, may appeal therefrom to the general sessions of the

peace, unless the particular Act under which the conviction or order is made provides otherwise. REX v. TUCKER, 10 C. C. C. 217.

20. **Appeal** — RETURN OF CONVICTION, DEPOSITIONS AND EVIDENCE.]—The production of the depositions and evidence taken by a justice are not necessary for the purposes of appeal from a summary conviction. Sec. 888 of the Crim. Code makes it imperative that the conviction shall be filed in the court to which the appeal is made before the time when such appeal shall be heard. REX v. RONDEAU, 9 C. C. C. 523, 5 Ter. L. R. 478.

21. **Appeal to County Court** — NONE THENCE TO SUPREME COURT.]—A conviction by a stipendiary magistrate was removed by appeal to the county court and there quashed :—Held, that no appeal lay to the Supreme Court as none was expressly given by the Act creating the offence and giving the appeal to the county court, although the Acts creating and organizing the county courts gave a general appeal to the Supreme Court. MCDONALD v. MCCUISH, 5 R. & G. N. S. R. 1.

22. **Certiorari.**]—The Supreme Court has power over a conviction by a justice of the peace in a penal matter. MERCIER v. PLAMONDON, Q. R. 20 S. C. 288.

23. **Certiorari** — DEPOSIT OF TRAVELLING FEES IN MAGISTRATES' COURT, WHERE SUMMONS ISSUED TO BE SERVED OUT OF COUNTY — EFFECT OF NON-COMPLIANCE WITH STATUTE.]—Construction of 5th R. S. c. 102, s. 2, R. S., c. 102, s. 2, enacts that in all cases where the defendant does not reside in the county where the summons is issued, it shall be incumbent on the justice before issuing the writ to require the plaintiff to deposit with him a sum equal to ten cents per mile each way between the residence of the defendant and the place of trial, and in case such deposit shall not be actually paid in as aforesaid, and indorsed on both original and copy, the said writ and service shall be void. Plaintiff issued a summons in the magistrates' court against defendant to recover an amount claimed to be due for goods sold and delivered, but omitted to deposit or to have indorsed on the original and copy of the writ a sufficient amount to cover defendant's travelling expenses, as required by the statute. The magistrates admitted that the amount was insufficient, but permitted the plaintiff to cure the deficiency by depositing a further amount, and proceeded with the trial. Defendant made no defence, and judgment was given for plaintiff. Defendant appealed, and in the county court application was made on affidavit for judgment in his favor on the ground stated. The application having been refused, the case was tried on its merits, and judgment given for plaintiff. The judgment was not appealed from, but a case was stated by the learned Judge for the opinion of the court on the interlocutory application as to the power of the magistrates to permit the defect in the summons to be cured at the trial :—Held, per Weatherbe, J., that the question of the insufficiency of the amount did not come properly before the county court Judge on the appeal, but should have been brought up by certiorari while the case was before the magistrates. Per Smith, J., that the defendant should have had judgment before the magistrates. Per McDonald, C. J., that the summons and all the proceedings before the magistrates were void for non-compliance with the statute, and the appeal from the void proceedings could not give the County Court Judge jurisdiction to adjudicate on the subject matter of the cause. MOFFATT v. MCRITCHIE, 7 R. & G. N. S. R. 228, 7 C. L. T. 322.

24. **Certiorari** — NOTICE TO JUSTICE — 13 GEO. II., c. 18.]—The certiorari was attacked on the ground that no notice had been given to the magistrate as required by Imperial Statute, 13 Geo. II., cap. 18, but no such ground was taken in the rule :—Held, that the ground could not be taken at the argument. Quære, whether the rule requiring notice applied to this case where the justice acted as a special statutory court, and not simply as a justice of the peace. TUPPER v. MURPHY, 3 R. & G. N. S. R. 173.

25. **Certiorari** — NOTICE, &c.]—A writ of certiorari to remove a prosecution for selling liquor contrary to the provisions of the Provincial License Act, from the Magistrate's Court, to the County Court was quashed by a judge of the latter Court on the grounds — 1st, that the parties applying for the writ did not give the six days' notice of their

intention to the justices required by 13 Geo. II., c. 18, s. 5; and 2nd, because they did not swear that they did not sell liquor contrary to law. An appeal from the decision of the County Court Judge was dismissed with costs. McDONALD v. RONAN, 7 R. & G. N. S. R. 25.

26. **Certiorari** — NOTICE TO JUSTICE ON MOTION FOR WRIT OF — IS NECESSARY.]—RE PLUNKETT, 3 B. C. R. 484.

27. **Default of Magistrate** — CERTIORARI — AFTER ABORTIVE APPEAL.]—Where an appeal was quashed owing to the deposit, made as a preliminary to the appeal, being improperly returned by the magistrate :—Held, a writ of certiorari will be granted to remove a summary conviction notwithstanding the abortive appeal. REX v. ALFORD, 10 C. C. C. 61.

28. **Dismissal of Complaint** — LIMITED RIGHT OF APPEAL — LIQUOR LICENSE ACT.]—Under the Ontario Liquor License Act no appeal lies from the dismissal of the complaint of a license inspector by a police magistrate acting in that capacity, and not as an ex-officio justice of the peace, the construction of s.-s. 6 of sec. 118 of the Liquor License Act not including a police magistrate in referring to proceedings before a justice or justices. REX v. SMITH, 10 C. C. C. 362.

29. **Duties** — COMPELLING PERFORMANCE OF JUDICIAL ACTS.]—In case a justice of the peace refuses to perform an official act, the court, or a Judge thereof, may by rule or order compel him to perform it. The issuing of a capias is an official act, within the meaning of cap. 90, s. 5, of the Consol. Stat. WATERBURY v. NIXON, 2 P. & B., N. B. R. 373.

30. **Duties** — COMPELLING JUSTICE TO PERFORM JUDICIAL ACT.]—The power given to the Supreme Court by the Rev. Stat. cap. 129, s. 5, Consol. Stat. cap. 90, to compel a justice of the peace to perform a judicial act does not apply to the proceedings before justices in civil suits under cap. 137 of Rev. Stat. (Consol. Stat. cap. 60). BUSTIN v. ELLIS, 6 All., N. B. R. 231.

31. **Information not Under Oath** — CURING DEFECT.]—In a case of selling liquor without license the information was not under oath. The defendant's counsel appeared, however, on the day of trial, and though he raised this objection he did not ask a delay or adjournment, and cross-examined the witnesses. The defendant was convicted on clear proof of the offence, and it did not appear that she had been in any way misled or prejudiced by the alleged defect in the information :—Held, under these circumstances, that the 1 Rev. Stat. cap. 138, (Consol. Stat. cap. 62), cured the defect. REGINA v. McMILLAN, 2 Pug., N. B. R. 110.

32. **Information**—VARIANCE—CONVICTION.]—On an information for selling spirituous liquors without license contrary to the by-laws of the town of Moncton, the illegal sale was proved, but there was no evidence of the by-laws, and the justices convicted the defendant of selling contrary to the statute to regulate the sale of spirituous liquors, 17 Vict. cap. 15. —Held, that as it did not appear that the defendant was misled, or had any defence on the merits, the variance between the information and the conviction was not fatal since the Rev. Stat. cap. 138, s. 1. EX PARTE DUNLAP, 3 All., N. B. R 281.

33. **Mandamus** — JUDICIAL ACT — ERRONEOUS DECISION.]—Passing sentence upon an offender is a judicial act. Where a police magistrate, passing sentence in his judicial character decides erroneously, the decision, however erroneous, is a matter within his jurisdiction and cannot be called in question by mandamus. Mandamus will only lie where there is a refusal by the magistrate to perform his duty. REX v. CASE (No. 1) 7 C. C. C. 204.

34. **Mandamus** — SUMMARY CONVICTION — R. S. O. 1897, CH. 10.]—R. S. O. 1897, ch. 10, provides a summary mode for the trial of persons accused of personation at an election before such person has left the polling place. Where such information is laid and accused is arrested, the magistrate can only proceed summarily and the prosecutor, who is not the informant, has no right to apply for a mandamus to compel the magistrate to impose a more onerous sentence. REX v. CASE, (No. 2), 7 C. C. C. 212.

35. **Mandamus to Justices, &c.** — CANADA TEMPERANCE ACT — PROCLAMATION OF.]—Application was made to the court

for a writ of mandamus to compel two justices of the peace for the county of Cumberland to issue a warrant against defendant for a violation of the Canada Temperance Act, 1878. The justices declined to issue the warrant on the ground that the notice of the Secretary of State referred to in sections 5 and 6 of the Act, and required to be filed in the office of the Sheriff or Registrar of Deeds of or in the county, was not regularly filed, there being two registrars of deeds in the county of Cumberland, one at Amsherst and one at Parrsboro, and the notice having been deposited only with the former, as a consequence of which the justices considered that the subsequent proceedings were irregular and that the Act was not in force in the county. The proclamation having issued and the election having taken place and resulted in the adoption of the Act :—Held, that as the effect of going behind the election would be to create difficulties and mischief, the language of the Act must be regarded as directory and not mandatory, and that the mandamus applied for must issue. Per McDonald, C. J., and Ritchie, J, that the Governor in Council being constituted the judicial authority to determine whether the preliminaries directed by the Act had been complied with, and having determined in the affirmative and issued the proclamation, the regularity of the preliminary proceedings could not be questioned. REG. v. HICKS, 7 R. & G. N. S. R. 89, 7 C. L. T. 143

36. **Procedure.**]—A certiorari issued on 12th April, 1872, on motion of defendant, to a police magistrate, to return a conviction for selling liquor without license. This writ was returned on 21st May, in Easter term, with conviction and recognizance, and both defendants appeared to it by taking out rules. The prosecutor then obtained a rule nisi to quash the certiorari and for the procedendo to the police magistrate. But up to this time there had been no motion to quash the conviction. It was urged by the defendant that he had all the term within which to move against the conviction, and that as the proceedings were removed into the Queen's bench they must be finally dealt with there :—Held, 1. That the proper practice is, that an appearance to the certiorari should be filed in the Crown office, and the case set down on the paper, so that either party might move for a concilium; 2. that the defendant was in default in not having moved to quash the conviction, or set down the case on the paper Semble, that an affirmance of the conviction by the prosecutor is necessary to obtain the costs and further, as this was not done, the court declined to estreat the recognizance. A procedendo was awarded, it being thought more advisable that the police magistrate should enforce the conviction than the court above. REGINA v. FLANNIGAN, 9 C. L. J. 237.

37. **Protection** — REFUSING TO PROCEED IN CAUSE.]—Where a magistrate commenced the examination of a party on a criminal charge, and after hearing a portion of the evidence refused to proceed with it further, the court refused to grant a mandamus at the instance of private prosecutor to compel him to do so. REGINA v. DUVANEY, 1 Han., N.B.R. 581.

38. **Recognizance.**]—By s. 90, of R. S C. c. 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 there 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, 17 O. R. 729.

39. **Recognizance.**]—It is only by the indulgence of the court that a second application is permitted or entertained where the first application has been refused. And where the defendants' applications for orders nisi to quash convictions were refused upon the ground of non-compliance with the statute and rule requiring a recognizance and affidavit of justification to be filed, and the court upon such applications was not favourably impressed by what was urged as to the merits of the applications :—Held, that the indulgence of the court ought not to be extended in favour of fresh applications made by the defendants upon new material supplying the defects. S. C. 13 P. R. 303.

40. **Remission of Penalty and Costs** FISHERIES ACT.]—A rule nisi was granted calling upon a justice to show cause why a mandamus should not issue to compel him to issue a warrant of distress for costs, on a conviction made by him for an offence against the Fisheries Act. The Minister of Marine and Fisheries had remitted both fine and costs, and the magistrate declined to issue an execution for costs :—Held, per Tuck, C. J., Hannington and McLeod, JJ., the Minister had power under sec. 18, s.-s. 6 of the Fisheries Act to remit the penalty, but no authority to remit the costs, and the justice should issue a distress Warrant for the costs. Per Barker and Gregory JJ., the remission of the penalty leaves the prosecutor without any remedy for the recovery of his costs, and a justice should not be put in peril by being compelled to issue a distress warrant. Per Landry, J., that the Minister of Marine and Fisheries has power to remit both fine and costs, the word 'penalty' in sec. 18, s.-s. 6 including both. Court equally divided, no order made. EX PARTE GILBERT, 10 C. C. C. 38.

41. **Reviewing Finding of Fact.**]—On an application to quash a conviction brought up upon certiorari, the court will not notice any facts not appearing in the conviction, for the purpose of impeaching it on any ground, except want of jurisdiction; nor has the court any power to review the decision of the sessions in a matter within their jurisdiction, nor to grant a mandamus to compel them to rehear an appeal. The court refused, therefore, to quash a conviction under the Liquor License Act, affirmed on appeal, on the ground, among others, that the general verdict of guilty was inconsistent with the answers of the jury to specific questions. REGINA v. GRAINGER, 46 U. C. R. 382.

42. **Reviewing Findings of Fact.**[—Where the proceedings before a magistrate are removed under 29 & 30 Vict. c. 45, the Judge is not to sit as a court of appeal from the findings of the police-magistrate upon the evidence which that officer has taken; if any fact found by the magistrate is disputed, and he would have no jurisdiction had he not found that fact, then the evidence may be looked at to see whether there was anything to support his finding upon it; but if the jurisdiction to try the offence charged does not come in question as a part of the evidence, then the jurisdiction having attached, his finding is not reviewable as a general rule except upon an appeal. REGINA v. GREEN, 12 P. R. 373. REGINA v. DOWLING, 17 O. R. 698.

43. **Reviewing Findings of Fact.**]—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, 27 O. R. 59.

44. **Reviewing Evidence.**]—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 severity of the fine, under the circumstances of the case, remarked upon. REGINA v. HOWARTH, 33 U. C. R. 537.

45. **Review** — POINT NOT RAISED AT TRIAL — SUBSTANTIAL JUSTICE DONE.]—Where the court can see that substantial justice has been done in the proceedings before the justice, the decision will not be reversed on the ground which the parties themselves did not raise at the trial. REGINA v. ARCHIBALD, 2 P. & B., N. B. R. 250.

46. **Stated Case** — REQUEST FOR — OBJECTION TO REQUEST.]—Where an objection was taken to a request made to a justice for a stated case on the grounds that it was not a request to the justice to state and sign a case in writing 'setting forth the facts of the case and the grounds on which the proceeding is questioned', but a request "to state and sign a case under the provisions of s.-s. 2 of section 900 of the Criminal Code and the Rules of Court in accordance therewith :—Held, objection good, and no jurisdiction to entertain appeal. REX v. EARLY (No. 2), 10 C. C. C. 336.

47. **Stipendiary Magistrate Held Within 13 Geo. II., c. 18, s. 5.**]—Defendant was convicted before the stipendiary magistrate for Cornwallis police district of a violation of the Canada Temperance Act, 1878, and the conviction having been brought up by certiorari, the court was moved to set the conviction aside on the ground that the Act was not in force when it was made. The order for the certiorari was not moved for until after the lapse of twenty-two months from the date of the conviction :—Held, that in making the conviction the stipendiary magistrate was exercising the functions of a justice of the peace, and consequently that the Imperial Act, 13 Geo. II., c. 18, s. 5, limiting the granting the writ of certiorari to six months after the date of the conviction, applied. The motion was refused with costs and a procedendo ordered. Rigby, J., dissenting. The question was not raised whether the Act of 13 Geo. II. was in force in this Province but merely whether the stipendiary magistrate was within the Act. See Regina v. Porter, 20 N. S. R. 352. REGINA v. McFADDEN, 6 R. & G. N. S. R. 426, 6 C. L. T. 538.

48. **Stipendiary Magistrates** — ACT CREATING NOT ULTRA VIRES — DRUGGIST SELLING INTOXICATING LIQUORS.]—Defendant was convicted before the stipendiary magistrate for the police division of Yarmouth of selling intoxicating liquors without license, and appealed to the County Court, contending that the stipendiary magistrate had no jurisdiction, as the Act for appointing stipendiary magistrates and thus creating a court was ultra vires; that there had been no statement of claim filed before the issue of the writ as provided by 4th R. S., cap. 91, sec. 3, and that he was justified in selling liquors to be used medicinally by virtue of his being a licensed druggist, although no appointment had been made by the sessions under 4th R. S., cap. 75, sec. 41. The sales were made by the defendant and his clerk indiscriminately and without a doctor's prescription. The judgment of the County Court, dismissing the appeal, was affirmed, with costs. GARDNER v. PARR, 2 R. & G. N. S. R. 225, 1 C. L. T. 710.

49. **Summary Trial with Consent** — NO RIGHT OF APPEAL.]—Upon a charge of theft tried summarily with the consent of accused, an appeal does not lie from the decision of a police magistrate. It is the duty of the magistrate to cause the charge to be read over to the defendant and to ask him if he desires to be tried by a jury or if he consents to the case being dealt with summarily, and also to explain the meaning of the case being dealt with summarily. REGINA v. EGAN, 1 C. C. C. 112, 11 Man. L. R. 134.

50. **Trespass.**]—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 a gate at the west limit of the land where it met the highway which gate had been there from 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. Regina v. Malcolm, 2 O. R. 511, distinguished. Quære, whether a gate across a right of way is an obstruction in law Held, also, that the proviso in 32 & 33 Vict. c. 22, s. 60, (D.), is to be read as applicable to s. 29 and to the whole Act. REGINA v. McDONALD, 12 O. R. 381.

XI. WARRANTS.

1. **Information** — ISSUE OF WARRANT — GROUNDS OF SUSPICION — REASONABLE OR PROBABLE — DUTY OF MAGISTRATE.]—Before issuing a warrant of

arrest on an information setting out that informant has just cause to suspect and believe, and does suspect and believe that an offence was committed by accused, it is the duty of the justice to examine upon oath the complainant as to the facts upon which his suspicion and belief are founded, and to satisfy himself that such suspicion and belief are well founded. Upon the prosecutor electing not to have the information amended when objection was taken to it before the magistrate, before whom the accused was brought under the warrant, the charge should be dismissed. REX v. LIZOTTE, 10 C. C. C. 316.

2. **Information** — LIQUOR ACT — SEARCH WARRANT.]—A warrant cannot issue under the Act 18 Vict. c. 36, to search for liquors in a dwelling house, in which a family resides, without the information of three persons, though there may be a shop or place in the house for the sale of liquors. An information stating that intoxicating liquors are kept for illegal sale by A. "in his house or shop, or on the premises where he now dwells, in the county of C," is not sufficiently certain to authorize the search of a dwelling house under the said Act. Such an information will not justify a search warrant stating that there was a place in the dwelling house for the sale of liquors. EX PARTE CALDWELL, 3 All. N. B. R. 393.

3. **Proceedings for Penalties** — RECOVERY BEFORE MAYOR.]—Under the charter of the city of St. John the fine imposed upon persons carrying on trade within the city without having been admitted as freemen is properly recoverable before the mayor, although the warrant must be under the seal of the city. REGINA v. SMALL, 2 Kerr's, N. B. R. 48.

4. **Search Warrant** — ILLEGAL SALE OF LIQUOR.]—A warrant to search for liquor in a dwelling house in which a family resides, and no part of which is used as a shop or place for the sale of liquors, cannot issue under the Act 18 Vict. c. 36, without the oath of three persons stating their reasons for believing that liquors have been sold, or are kept in such dwelling house for illegal sale. REGINA v. SALTER, 3 All. N. B. R. 321.

Proof that the house in which the liquor was seized was kept as a hotel will not justify a search warrant on the information of one person, as it cannot be judicially noticed that an hotel is a place for the sale of liquor. Where liquor legally imported is condemned under section 15, as being kept for illegal sale, the justice has no power to order the casks containing the liquor to be destroyed. The onus for proving that the liquor was not intended for sale, in order to save it from forfeiture under section 15, is thrown on the owner; but to subject him to the penalty under section 16, it must be proved that he intended the liquor for illegal sale. An information under the Act need not state that the informer is a reputable person. IB.

5. **Warrant of Arrest** — GROUNDS — ISSUE WITHOUT INQUIRY — LIABILITY.]—A justice of the peace who issues a warrant of arrest without inquiring into the grounds which the complainant has for suspecting the accused, is responsible to the latter when the complaint is not justified by any serious, reasonable, or plausible ground. MURFINA v. SAUVE, Q. R. 19 S. C. 51.

XII. MISCELLANEOUS.

1. **Affidavits.**]—When a distress warrant upon a conviction, has been issued and returned, the truth of the return cannot be tried upon affidavits. REGINA v. SANDERSON, 12 O. R. 178.

2. **Arbitrators** — ONE, BEING A JUSTICE, MAY ADMINISTER OATH TO OTHERS.]—The appointment of a magistrate as an arbitrator will not disqualify him for administering the oath of office to the other two arbitrators. IN RE THOMAS KENNY, 2 Thom. N. S. R. 14.

3. **Capias** — AFFIDAVIT FOR.]—Capias issued by magistrates set aside on the ground that it was issued, and the defendant arrested under it, without an affidavit of the grounds of the plaintiff's belief, as required by chapter 22 of Acts of 1879, sec. 3. MCLEAN v. MCKAY, 1 R. & G. N. S. R. 383.

4. **Certiorari** — RETURN OF MONEYS COLLECTED.]—A justice of the peace whose judgment is removed upon a writ of certiorari, must, in presenting to the court the documents relating to the matter, deposit all sums of money collected

by him under his judgment. 2. If he does not do so a rule nisi may be issued against him obliging him to make such deposit. MERCIER v. PLAMONDON, Q. R. 21 S. C. 335.

5. **Company.**]—Section 705 of the Municipal Act, R. S. O. 1897, c. 223, as to summary prosecutions before a justice of the peace for offences against municipal by-laws, applies to incorporated companies as well as to individuals, as do also ss. 562, 853, and 858 of the Criminal Code, 1892, as to service of summonses. IN RE REGINA v. TORONTO R. W. CO., 30 O. R. 214.

6. **Conviction for Violation of City Charter** — ALTERNATIVE PUNISHMENT — PENALTY — HOW RECOVERED.]—The defendant having been convicted of a violation of the charter of the city of Halifax, Acts 1864, chapter 81, section 227, by keeping a disorderly house was adjudged to pay the sum of $40 and "if the said sum be not paid forthwith, to be imprisoned in the city prison for the space of ninety days" :—Held, that the alternative punishment imposed was authorized by sec. 139 of the Act; also, that under the Acts of 1882, chapter 25, section 19 the penalty was clearly recoverable in the name of the city of Halifax before the stipendiary magistrate at the police court. THE CITY OF HALIFAX v. BROWN, 6 R. & G. N. S. R. 103, 6 C. L. T. 144.

7. **Defendant Giving Evidence.**]—On the trial of an offence against a city by-law in the erection of a wooden 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

8. Where a defendant submits to examination before a magistrate it is too late afterwards to object to its propriety. REGINA v. RAMSEY, 11 O. R. 210.

9. **Compelling Accused to Testify.**]—See Regina v. Lackie, 7 O. R. 431. REGINA v. MCNICOL, 11 O. R. 659

10. On the trial of an offence under a by-law the magistrate cannot refuse to receive the defendant's evidence. REGINA v. GRANT, 18 O. R. 169. But see REGINA v HART, 20 O. R. 611.

11. **Distress.**]—Held, that a provision for distress in the conviction in default of payment of the fine and costs imposed, did not constitute a part of the penalty or punishment imposed by the by-law, but was merely a means of collecting the penalty as authorized by 39 Vict. c. 33, s. 2, s.-s. 14 (O.), and s. 421 of the Municipal Act, R S. O. 1887, c. 184. REGINA v. FLORY, 17 O. R. 715.

12. **Distress** — COSTS OF CONVEYING TO GAOL.]—It was held no objection to a warrant of distress under a conviction, that the costs of conveying the defendants to gaol, in the event of imprisonment in default of distress, were specified. REID v. MCWHINNIE, 27 U. C. R. 289.

Held, also, that the mention in the warrant of the $1 casts of conveying defendant to gaol, could not vitiate, for it authorized a distress only for the penalty and costs of conviction. IB.

13. **Effect of Warrant.**]—The mere fact of the warrant of commitment having been countersigned, under 31 Vict. c. 16 (D.) by the clerk of the Privy Council, does not withdraw the case from the jurisdiction of a Judge on a habeas corpus. The prisoner may contradict the return to the writ by shewing that one of the persons who signed the warrant was not a legally qualified justice of the peace. REGINA v. BOYLE, 4 P. R. 256.

14. **Form of Information.**]—Held, that the information in this case was not objectionable for not setting out the false pretences of which the defendant was convicted, as it was in the form in which an indictment might have been framed; and moreover that the objection was met by 32 & 33 Vict. c. 32, s. 11 (D.), and by 32 & 33 Vict. c. 31, s. 67 (D.). REGINA v. RICHARDSON, 8 O. R. 651.

15. **Imprisonment** — PRIOR DISTRESS.] —Held, that under 36 Vict. c. 48, s. 315, where a person is ordered to pay a fine, or in default to be imprisoned, a distress must issue for the fine and be returned unsatisfied before he can get imprisoned. REGINA v. BLAKELEY, 6 P. R. 244.

16. **Information** — RIGHT TO KNOW INFORMER.]—In a proceeding under Act 18 Vict. cap. 36, s. 15, the person summoned to show why the liquors seized should be forfeited, has a right, before going into his proof, to be informed who

the complainant is, and what he has sworn to in his information. Ex Parte Stevenson, 3 All., N. B. R. 391.

17. **Information** — Warrant to Arrest — Duty of Justice.]—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 specific offence triable under the Summary Convictions Act, 32 & 33 Vict. cap. 31, will not authorize a justice 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, 24 N. B. R. 347.

18. **Justice of Peace Acting in Place of Police Magistrate** — Defect in Designation.]—A warrant, signed by a justice of the peace acting in the absence, illness, or at the request of a police magistrate, must show fully that the person issuing it has authority so to act. A magistrate thus acting must state on the face of his summons, his authority for so doing. The mere initials J. P. do not describe him with sufficient fulness. Regina v. Lyons, 2 C. C. C. 218.

19. **Livery Stable.**]—Section 510 of the Municipal Act, 1883, authorizes the licensing of owners of livery and stables of horses, &c., for hire. A by-law passed thereunder required every person owning or keeping a livery stable or letting out horses, &c., for hire to pay a license fee. Defendant was convicted under this by-law, for that "he did keep horses, &c., for hire" without having paid the license fee :—Held, that the conviction was in conformity with both statute and by-law. Regina v. Swalwell, 12 O. R. 391.

20. **Pleading.**]—In an action against a justice of the peace and constable for having issued a search warrant against the plaintiff, for having and concealing a colt belonging to another :—Held, that the notice of action and statement of claim, being each of them founded upon a cause of action arising in a case in which the justice had jurisdiction, were defective for want of the allegation that the justice acted "maliciously, and without reasonable and probable cause," and that the statement of claim was defective in not shewing a right to restitution of the property, although the plaintiff was acquitted of any wrongful taking, detention, or concealment of the same. Howell v. Armour, 7 O. R. 363.

21. Held, that the plaintiff had no ground of action against the magistrate for not restoring the property to him, because he had been acquitted of the larceny, as the magistrate was entitled to detain it, if proved to have been stolen, until the larceny could be tried, or that, for some sufficient reason, no trial could be had, the statement of claim not alleging that the property had not been stolen. Ib.

The information, produced at the trial of an action for malicious prosecution, was, that the defendant's premises were set on fire; that he had good reason to believe that they were set on fire by the plaintiff, and prayed that the plaintiff might be held to answer "the said charge." The declaration alleged that defendant charged the plaintiff with having unlawfully and maliciously set on fire the defendant's premises :—Held, after the verdict for the plaintiff, that the declaration, though not sufficiently precise, might be held to import a crime; but that there was a variance between the declaration and evidence, the information not charging any crime. Munroe v. Abbott, 39 U. C. R. 78.

22. **Proceedings for Penalties** — Recovery Before Mayor.]—The penalties imposed by the Act 3 Vict. cap. 47, for selling liquor without license, are recoverable before the mayor of Fredericton, under the Act of Incorporation, 14 Vict. cap. 15, s. 67. The mayor being ex-officio a justice of the peace may in that character proceed for penalties which by the city charter are made recoverable before the mayor. Regina v. Allen, 2 All., N B. R. 435.

23. **Proceedings for Penalties** — Action for Debt — Cumulative Remedy.]—The action of debt given by Act 15 Vict. cap. 31, is a cumulative remedy, and does not take away the mode of proceeding prescribed by the Summary Convictions Act 12 Vict. cap. 31. Ex Parte Hartt, 3 All., N. B. R. 122.

25. **Proceedings for Penalties** — SUMMONS — SERVICE.]—A proceeding for a penalty under the Act 15 Vict. cap. 51, for selling intoxicating liquors, is not a civil suit within the Justices' Act 4 Wm. IV. requiring six days' service of summons. Semble, such an objection to the summons would be cured by the appearance of the defendant. EX PARTE MCCOLL, 3 All., N. B. R. 48.

26. **Provincial Criminal Law** — SPECIAL CASE.]—A magistrate has no power to state a case under s. 900 of the Criminal Code, for an alleged offence against an Ontario statute, not involving the constitutionality of the statute, the procedure by way of appeal to the sessions provided for by Ontario legislation applying in such a case. REGINA EX REL. BROWN v. ROBERT SIMPSON COMPANY (Limited), 28 O. R. 231.

27. **Rule to Compel Magistrate to Act.**]—Rule applied for under 4th R. S. c. 112, sec. 13, to compel a stipendiary magistrate to make an order for the commitment of the defendant under Dominion Act, 1869, c. 20, sec. 25, for not providing necessary food, etc., for his wife, refused on the ground that the justice in declining to make the order exercised a judicial discretion. REGINA v. SHORTIS, 1 R. & G. N. S. R. 70.

28. **Solemnizing Marriage** — PROCEEDINGS FOR PENALTIES.]—The fine imposed by Rev. Stat. cap. 146, s. 3, for knowingly solemnizing a marriage where either party is under twenty years of age without consent of father, may be recovered before two justices of the peace under Rev. Stat. cap. 161, s. 32. The proceedings need not be in the name of the Queen. REGINA v. GALLANT, 5 All., N. B. R. 115.

29. **Stated Case** — COURT OF APPEAL.]—A case can be stated by a justice of the peace under R. S. O. 1897, c. 91, s. 5, for the judgment of the court of appeal, only when the constitutional validity of a statute is involved and not when the decision depends merely upon whether the statute is or is not applicable to the defendants. It was held, therefore, that an appeal, by way of stated case, would not lie from the decision of the police magistrate of the city of Toronto that the Toronto Railway Company were bound by a by-law of the corporation, passed under the authority of the Municipal Act, directing them to put vestibules on their cars, the company contending that the by-law and the Municipal Act did not apply because their lines crossed the lines of the Dominion railways, thus making their undertaking a work for the general advantage of Canada and subject only to Dominion regulation. REGINA v. TORONTO R. W. CO., 26 A. R. 491.

30. **Summons** — INDORSEMENT — ACT OF 1865, C. 1, S. 5, CONSTRUCTION OF.]—A magistrate's summons not indorsed with the notice required by the Provincial Act of 1865, chap. 1, sec. 6, is absolutely void. MCDONALD v. MILLS, 2 Old. N. S. R. 165.

31. **Summons upon Complaint** — PARTY APPEARING.]—Where power is given by an Act to a justice of the peace to issue a summons upon complaint made on oath, and the party to be summoned appears and defends the suit without any summons being issued, he cannot afterwards object that there was no complaint on oath—this being only a preliminary step to authorize the summons to issue. EX PARTE WOOD, 1 All., N. B. R. 422.

32. **Summons** — WANT OF NOTICE ON WAIVER.]—The objection to the want of the notice on a magistrate's summons required by the Provincial Act of 1865, cap. 1, sec. 6, is waived by the defendant when he goes into his evidence at the trial before the magistrates. BELLONI v. MURPHY, 2 Old. N. S. R. 166.

33. **Trespass.**]—The honest belief of a person charged with an offence under R. S. O. 1897, c. 120, s. 1, (unlawfully trespassing) or the Criminal Code s. 511, (wilfully committing damage to property) that he had the right to do the act complained of, is not sufficient to protect him, there must be fair and reasonable ground in fact for that belief. The usual reservation in a patent of land bounded by navigable water of "free access to the shore for all vessels, boats, and persons," gives a right of access only from the water to the shore, and in this case it was held that a person who had broken down fences and had driven across private property to the shore could not successfully assert, when charged under R. S. O. 1897,

c. 120, s. 1, and the Criminal Code, s. 511 that he had "acted under a fair and reasonable supposition of right" in so doing. REGINA v. DAVY, 27 A. R. 508.

34. **Unauthorized Fees** — WILFULLY RECEIVING — EXTORTION BY JUSTICE OF THE PEACE.]—The Crim. Code gives a schedule of fees to be taken by justices in proceedings under the Summary Convictions Part LVIII., the items of fees are exactly similar to those contained in the schedule of the Ontario Act. Under the Ontario Act, sec. 3, a penalty is imposed on a justice of the peace who wilfully receives a larger amount of fees than authorized by law, and the wording and penalty in the Code are similar. The Acts referred to relate solely to summary convictions in cases where the magistrate has jurisdiction. Under sec. 905 of the Crim. Code a justice who wilfully receives such fees may be indicted for extortion. McGILIVRAY v. MUIR, 7 C. C. C. 380, 6 O. L. R. 154, 23 Occ. N. 282.

35. **Waggons** — LICENSE.]—The defendant was convicted of a breach of a by-law passed under s. 436 of R. S. O. 1887, c. 184, which provided that no person should, after the passing thereof, without a license therefor, "keep or use for hire any carriage truck cart," &c. The defendant was the owner of waggons and horses which, at the date complained of, were employed in hauling coal and gas pipes for a gas company, for which defendant was paid by the hour or day. The defendant also engaged carts and horses which he hired out to haul earth which were so being used in the day complained of :—Held, that the defendant came within the terms of the by-law, and was therefore properly convicted. REGINA v. BOYD, 18 O. R. 485.

36. **Waggons** — SOLICITATIONS]—A city by-law prohibited any person licensed thereunder soliciting any person to take or use his express waggon, or employing any runner or other person to assist or act in consort with him in soliciting any passenger or baggage at any of the "stands, railroad stations, steamboat landings, or elsewhere in the said city." But persons wishing to use or engage any such express waggon or other vehicle should be left to choose without any interference or solicitation. An employee of defendants with the consent of a railway company and under instructions from his employer boarded an arriving passenger train at one of the outlying city stations on its way to the main station in the city, and went through the cars calling out "baggage transferred to all parts of the city" and having in his hands a number of the transfer company's checks. No baggage was taken at the time :—Held, that there was no breach of the by-law but merely the carrying out of the defendant's agreement with the company and further, that the train did not come within any of the places mentioned in the by-law. Semble, if the by-law in terms had covered this case it would have been ultra vires. REGINA v. VERRAL, 18 O. R. 117.

37. **Witness Fees.**]—Section 58 of R. S. C. c. 178, authorizes justices of the peace to allow witness fees. REGINA v. BECKER, 20 O. R. 676.

See also APPEAL — CERTIORARI — CONVICTION — HABEAS CORPUS — MANDAMUS.

KEEPING THE PEACE.

1. **Conviction for, Must Fix Amount of Security** — PRE-REQUISITES TO WARRANT OF COMMITMENT.]—A justice of the peace requiring any one to give security to keep the peace must fix the amount of the bond to be given, and order him to be imprisoned for a term to be mentioned, not exceeding twelve months, in case he should refuse or neglect to give such security. Such justice can only issue his warrant of commitment upon establishing and recording the defendant's refusal or neglect to furnish the security. RE JOHN DOE, 3 C. C. C. 370.

KIDNAPPING.

1. **Extradition Offence** — REMOVAL OF CHILD BY A DIVORCED PARENT AFTER ORDER OF COURT GIVING CUSTODY TO OTHER PARENT — CODE SEC. 284.]—1. A parent would be guilty of kidnapping or child-stealing, in taking a child away from the possession and control of the other parent to whom such possession and control had been lawfully entrusted

by order of a court of competent jurisdiction. 2. Such parent would be guilty of the offence notwithstanding the fact that the other parent entitled to the possession and control had not had the actual possession of the child at the time of the kidnapping. Kidnapping as an extradition crime discussed. (See Extradition) RE LORENZ, 9 C. C. C. 158.

2. **Intent.**]—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 32 & 33 Vict. c 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, &c., (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, &c. The Judge fixed the 3rd 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 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. c. 35, s. 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, also, 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. c. 20, s. 69, under which the charge was made, "Whosoever, 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, that the intent required applied to the seizure and confinement in Canada, as well as to kidnapping; and that the first count was therefore defective in not stating any intent. Upon this ground, the judgment was reversed and under C. S. U. C. c. 113, s. 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. c. 29, ss. 1 and 71 (D.). Held, also, that the court would not presume that the two counts referred to the same offence, and if it were so, duplicity would not be the ground of error. Held, also, no objection that the jurisdiction conferred by 32 & 33 Vict. c. 35, was not shewn, for the record and judgment were in the form prescribed by that Act. Held, also, that the sheriff's notice was sufficient, as 32 & 33 Vict. c. 35, s. 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. REGINA, 33 U. C. R. 106.

LANDLORD AND TENANT.

1. **Fraudulent Removal of Goods to Prevent Distress.**]—A landlord cannot follow and distrain his tenant's goods which have been fraudulently removed to prevent a distress for rent due, if at the time of the distress the tenant's interest in the demised premises has come to an end and he is no longer in possession. REX v. DAVITT, 7 C. C. C. 514.

See also FRAUD.

LARCENY.

See THEFT.

LAWFUL SEIZURE.

1. **Lawful Seizure** — CRIM. CODE 144 (2) — CONDITIONAL SALE AGREEMENT — RECAPTION OF GOODS.]—The prisoner was indicted under Crim. Code sec. 144, s.-s

2 (b) for wilfully obstructing a person in making a "lawful distress or seizure". The evidence showed that the prisoner had made default under a conditional sale agreement, the property of which was to remain the vendor's until payment of the price. The vendor sent an agent to retake possession which was resisted. It was held that the vendor's agent was not making a 'lawful seizure', and Crim. Code sec. 144 (2) was never intended to enlarge the civil rights of individuals or to convert a breach of contract or resistance to private force into a criminal offence, and conviction quashed. REX v. SHAND, 8 C. C. C. 45, 7 O. L. R. 190.

LEGAL RIGHT.

1. **Preliminary Questions Relating Thereto to be Submitted to Jury.**]—Upon an indictment for murder, preliminary questions of fact tending to show that the deceased had exceeded his legal right in forcibly ejecting the accused, should be submitted to the jury for the purpose of determining whether the charge should be reduced to manslaughter. REGINA v. BRENNEN, 4 C. C. C. 41, 27 O. R. 659.

LICENSE.

1. **Power of Dominion Parliament in Relation to Fire Insurance.**]—Provisions of R. S. C. c. 124, 1886, dealing with the right of insurance companies incorporated in one province to carry on business in another province held to be intra vires. REGINA v. HOLLAND, 4 C. C. C. 72, 7 B. C. R. 281.

See also HAWKING — INTOXICATING LIQUORS — LIQUOR LICENSE — TRADER.

LIEN.

1. **Lien** — FOR FOOD — LAWFUL SEIZURE AND DETENTION — THEFT — SEC. 306.]—The common law lien for an hotel keeper on the goods of a guest, for a board and lodgings' bill is not waived by allowing the guest to enter and take certain specified articles; nor is it vitiated by claiming too much, where a proper tender could have been made by the guest (of the correct amount), and such goods so held and detained are under "lawful seizure and detention", within the meaning of the Code sec. 306; and a guest who takes such goods away without authority may be legally convicted of the offence of stealing. R. v. HOLLINGSWORTH, 2 C. C. C. 293, 4 Ter. L. R. 168.

2. **Hotel Keeper's Lien** — THEFT OF GOODS UNDER SEIZURE BY GUEST — CODE SEC. 306.]—The common law lien of an hotel-keeper on the goods of a guest, is not waived by allowing the guest to enter and take certain articles only; nor is it vitiated by claiming too much, where a proper tender could have been made of the correct amount; and such goods so held and detained are under "lawful seizure and detention" within the meaning of sec. 306 of the Code, and anyone taking such without authority may be legally convicted of theft. R. v. HOLLINGSWORTH, 2 C. C. C. 293, 4 Ter. L. R. 168.

See also INN-KEEPER.

LIEN NOTE.

1. **Criminal Code, Sec. 360** — "VALUABLE SECURITY" — LIEN NOTE.]—An ordinary "lien note" is a "valuable security" within the meaning of sec. 360 of the Criminal Code, 1892. THE KING v WAGNER, 5 Terr. L. R. 119.

LIMITATION OF ACTION.

1. **Masters and Servants Act.**]—A conviction under the Masters and Servants Act was quashed on the ground, inter alia, that the complaint was made more than a year after the cause of it arose, the Act requiring such complaints to be made within six months from the offence charged. MERRITT v. ROSSITER, T. W. 1, (Man.).

2. **Not Applicable to Criminal Proceedings under Ontario Elections Act.**]—A prosecution under sec. 188 of the Ontario Elections Act is not an action, and it is therefore not necessary to commence

such prosecution within one year after the act committed as prescribed by sec. 195 of said Act. RE A. E. CROSS, 4 C. C. C. 173, 2 Elec. Cas. Ont. 158.

3. **Ontario Liquor License Act** — TIME LIMIT STATED IN INFORMATION — AMENDMENT OF.]—Defendant was charged with illegally selling liquor during prohibited hours on the 16th of April 1899.—The information laid stated the date of the offence to be the 15th of April. After hearing the evidence the justice allowed an amendment making it Saturday the 15th or Sunday the 16th of April and convicted the defendant for an offence on the latter date. By the terms of the Act the information must be laid within 30 days after the commission of the offence, and in this case the amendment was made on the 29th of May following :—Held—that the amendment was irregular and that sec. 104 which empowers the justice to substitute for the offence therein charged any other offence must be read with sec. 95, and is governed by the time limited therein for laying a fresh information. R. v. HAWTHORNE 2 C. C. C. 468.

LIQUOR LICENSE.

1. **Brewers' License** — OMISSION TO EXPOSE IN WAREHOUSE — R. S. N. S. 1900, c. 100.]—It is not an offence under sec. 55 of R. S. N. S. 1900, c. 100, that a brewer omits to expose his license in his warehouse and premises, all the requirements governing brewers' licenses being covered by sec. 14 of the Act. REX v. OLAND, (No. 1), 8 C. C. C. 206.

2. **Brewers' License Sign** — OMISSION TO PUT UP — R. S. N. S. c. 100.]—It is not an offence under sec. 66 of R. S. N. S., 1900, c. 100, that a brewer omits to keep exhibited a sign over the door of his warehouse, and premises. All the requirements as to brewers' licenses being covered by sec. 14 of the Act. REX v. OLAND, (No. 2), 8 C. C. C. 208.

3. **Burden of Proof in Establishing Exemption Under.**]—In a prosecution under the Manitoba Liquor License Act, it is incumbent upon an accused setting up the defence, that the liquor was sold by him as a druggist duly registered, to prove that he was registered as such under the Act relating to the Pharmaceutical Association of Manitoba. The evidence of the accused that he was a druggist duly registered is insufficient. The registration must be proved either by a certified copy of the entry in the register, or by the certificate of the registrar in certain cases. REGINA v. HERRELL, 3 C. C. C. 15, 12 Man. L. R. 522.

4. **Certificate of Dismissal** — CASE NOT CONSIDERED.]—Where a charge of unlawfully selling liquor had been joined with a charge of keeping for sale without license, but the former charge being abandoned, the magistrate was justified in not granting a certificate of dismissal, as he could not certify that the case had been considered. REX v. STEVENS, 8 C. C. C. 76.

5. **Certiorari** — AFFIDAVIT ESSENTIAL UNDER NOVA SCOTIA ACT.]—The affidavit required by sec. 117 of the Liquor License Act of Nova Scotia, 1895, is essential to the allowance of a certiorari in relation to a conviction under the said Act. REGINA v. BIBELOW, 4 C. C. C. 337, 31 S. C. R. 128.

6. **Club** — KEEPING LIQUOR FOR SALE — NO PROFIT.]—The defendant received casks of liquor generally addressed to 'Italian Club', and the liquor was charged to the various members at cost price. The court finding that the property of the liquor was vested in the defendant who kept it on his own premises and transferred it for money to certain customers, the conviction was upheld. The fact of no profit being made by the defendant would not affect the case on the evidence. REX v. CAVICCHI, 8 C. C. C. 78.

7. **Constitutionality of Ontario Act.**]—The provisions of sec. 53 of the Ontario Liquor License Act are intra vires of the Legislature. REX v. LIGHTBURNE, 4 C. C. C. 358.

8. **Construction of Word "Meal"** — EXCUSE TO ENABLE TO SUPPLY LIQUOR.]—A provincial statute prohibiting the sale of liquor on Sundays, but not applying to the furnishing of liquor with meals, a provision in the statute exempting "hotel keepers or restaurant keepers supplying liquor to their guests with meals," from prosecution for selling liquor during prohibited

hours was held not to apply to the case where customer was served with crackers, and cheese for which no extra charge to that for the liquor was made, but that the word 'meal' meant food eaten to satisfy the requirements of hunger, and on the facts the supply of food by the defendant was a mere excuse to enable defendant to supply the liquor. REGINA v. SAUER, 3 B. C. R. 308, 1 C. C. C. 317.

9. In proof of defendant being a licensed hotel-keeper under the Act, a witness in giving evidence, stated defendant to be such, and although defendant was present and represented by counsel, he allowed the statement to pass unchallenged :—Held, sufficient, as the witness might have obtained his information from the defendant. REGINA v. FLYNN, 20 O. R. 638.

10. **Information Defective** — JURISDICTION.]—On a prosecution under the Liquor License Act, the information did not disclose that it was laid within six months after the commission of the offence or that the defendant had committed the offence within six months previous to its being laid. It was held that the magistrate acted without jurisdiction and prohibition granted. REX v. BREEN, 8 C. C. C. 147, 24 Occ. N. 325.

11. **Lease of Bar** — COLLUSIVE ARRAIGNMENT — CONVICTION OF HOTEL KEEPER.]—An hotel keeper had leased the bar-room of his hotel to another person, but the evidence showed that he was outside the province, no settlement had ever been made with him, the hotel-keeper received all monies from the bar, and paid all disbursements and expenses, etc. :—Held, that the lease was a mere collusive arraignment to enable the hotel-keeper to sell liquor without a license, and that he was properly convicted for selling intoxicating liquor without a license. REGINA v. LEARMONT, 5 C. C. C. 151.

12. **Liquor License Act.**]—Under the Ontario Liquor License Act the licensee cannot lawfully make a gift of liquor during prohibited hours. REGINA v. WALSH, 1 C. C. C. 109, 29 O. R. 36.

13. **Liquor License Ordinance** — APPEAL — AFFIDAVIT OF MERITS — ULTRA VIRES — JURISDICTION.]—Chapter 32 of Ordinance of 1900, s. 22 amending the Liquor License Ordinance (C. O. 1898, c. 89), requires that a special affidavit of the party appealing shall be transmitted with the conviction to the court to which the appeal is given :—Held, against the contentions, (1) that this provision is applicable only where the appeal is based on a denial of the facts established in evidence, and not where a question of law arising on such facts is involved; and (2) that the provision is ultra vires of the Legislative Assembly of the Territories—that there was no jurisdiction to entertain an appeal where this provision had not been complied with. THE KING v. McLEOD, 4 Terr. L. R. 513.

14. **Liquor License Ordinance (N. W. T.** — JURISDICTION — CRIMINAL CODE SEC. 842.]—The hearing of a charge under the Liquor License Ordinance (N. W. T.) 1891-92 must be heard, and determined by two justices of the peace, unless specially directed by the Ordinance itself. REGINA v. WILSON, 1 C. C. C. 132, 2 Terr. L. R. 79.

15. **Liquor License Ordinance** — OPEN BAR IN PROHIBITED HOURS — EVIDENCE OF LIQUOR LICENSE — CERTIORARI.]—A conviction under the Liquor License Ordinance 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. THE QUEEN v. HENDERSON, 4 Terr. L. R. 146.

16. **Liquor License Ordinance** — SUMMARY CONVICTION — CRIMINAL CODE — DIRECTION AS TO ONE OR MORE JUSTICES — CONVICTION — APPEAL — "SHALL" AND "MAY".]—The Liquor License Ordinance (No. 18 of 1891-92) provides by s. 105 that "all informations or complaints for prosecution of any offence against this Ordinance, except as herein specially provided, SHALL be laid or made .... before a justice of the peace," and by s. 106,that "such prosecution MAY be brought for hearing and determination before any two justices of the peace." The Criminal Code, part LVIII. (Summary Conviction), which has been made applicable to summary proceedings under the Liquor License Ordinance, provides (s. 842) that "every complaint and information shall be heard, tried, as determined and adjudged by one justice or two or more

justices, as directed by the Act or law upon which the complaint or information is framed, or by any other Act or law in that behalf." and that if there is not such direction in any Act or law then the complaint or information MAY be heard, tried, determined and adjudged by one justice ":—Held, on an appeal from a conviction that s. 106 constituted a "direction," that prosecutions should be heard, &c., before two justices of the peace, and that, therefore, one justice had no jurisdiction to convict, except in certain cases specially provided in the ordinance. THE QUEEN v. WILSON, 2 Terr. L. R. 79.

17. **Motion to Quash.**]—On motion to quash a conviction, it was objected that the evidence taken before the magistrates and returned by them was not shewn to have been read over and signed by the witnesses :—Held, that the maxim omnia praesumuntur esse rite acta applied and as the contrary was not shewn, it would be presumed to have been done. REGINA v. EXCELL, 20 L. R. 633.

18. **Physician** — PRESCRIPTION OF LIQUORS — SELLING LIQUOR.]—A physician who prescribes and furnishes his patients with liquor for medicinal purposes cannot be convicted of selling liquors without a license. REX v. CHICOYNE, 8 C. C. C. 507.

19. **Statutory Presumption** — REBUTTAL.]—The Liquor License Law (R. S. N. S. c. 100, s. 111), casts upon the "occupant" of premises the burden of provinthat the sale did not take place without his consent. It was held, though an express denial be made by accused of any authority or direction for the sale, the magistrate may regard all the facts of the case and refuse to believe the denial. REX v. ANDREW CONROD, 5 C. C. C. 414.

20. **Third Offence** — R. S. O. (1897) ch. 245, SEC. 101 — PREVIOUS CONVICTION.]—Admission of evidence of previous convictions before determining whether the defendant was or was not guilty of the offence charged as a third offence contrary to sec. 101 of R. S. O., 1897, ch. 245, even though such evidence was subsequently struck out, deprives the magistrate of jurisdiction and conviction quashed. REX v. NURSE, 8 C. C. C. 173, 7 O. L. R. 418.

21. **Third Offence** — OMISSION IN CONVICTION — AFFIDAVIT.]—On certiorari proceedings it appeared from an affidavit in answer, that although it did not appear in the conviction, the offence was committed after an information laid for the first offence as required by sec. 115, ss. (d) R. S. C. 1886, c. 106. The conviction followed the form provided by the Dominion Act, 1888, c. 34, sec. 14, Form V., which the statute says shall be sufficient. Certiorari refused. REX v. SWAN, 8 C. C. C. 86, 24 Occ. N. 239.

22. **Tribunal to Try Offenders Under.**]—The legislature of Ontario did not exceed its powers, when by sec. 91 of the Liquor Act, 1902, it provided for the substitution of county or district Judges for the tribunal provided by sec. 188 of the Ontario Election Act, to conduct the trials of offenders under the Liquor Act, and enabled them to exercise jurisdiction outside of their county of district. Such substitution is not the appointment or creation of a judicial office. REX v. CARLISLE, 7 C. C. C. 470, 6 Ont. L. R. 718. 23 Occ. N. 321.

23. **Unincorporated Club** — CONSUMPTION FOR MEMBERS ONLY.]—A person who, without a license, supplies liquor to an incorporated club of which he is a member, such member contributing to a fund for the purchase of spirituous liquors contravenes the Ontario Liquor License Act in unlawfully keeping liquor for sale. REX v. LIGHTBURNE, 4 C. C. C. 358.

24. **Warrant Defective Where no Particular Offence Charged.**]—A warrant is defective which charges a violation of the Nova Scotia Liquor License Act, without specifying some particular offence under such act. THE QUEEN v. HOLLY, 4 C. C. C., 510.

See also CERTIORARI — INTOXICATING LIQUORS--SALE OF LIQUOR--STATED CASE.

LOCALITY OF OFFENCE.

Ontario Sheep Protection Act — RESIDENCE OF OWNER — LOCALITY WHERE OFFENCE COMMITTED.]—The offence of having in possession a dog which has

worried, injured and destroyed sheep is committed where the dog is kept and not where the sheep has been worried, injured, or destroyed. REX v. DUERING, 5 C. C. C. 135, 2 O. R. 593.

See also JURISDICTION.

LORD'S DAY ACT.

See SUNDAY.

LOTTERY.

1. **Competition for Money Prizes** — ELEMENT OF SKILL IN ESTIMATES OF VOTES CAST AT AN ELECTION.]—Money prizes offered for the nearest estimates of votes polled at an election, the competition being open to those who either pay for certificates entitling them to submit estimates, or obtain such certificate by performing certain services in advertising the competition, do not constitute a lottery within the meaning of subsection (a) or (c) of section 205 of the Criminal Code. REX v. JOHNSTON, 7 C. C. C. 525, (Ont.).

2. **Disposing of Property by Chance** — DEVICE — VERDICT.]—Upon a case reserved for the opinion of the court, as to whether the interposition of a condition that the winner of a prize in a lottery should shoot a turkey at fifty yards in five shots, or, if a lady, that she should choose a substitute to shoot for her, would prevent a conviction under s. 205 of the Criminal Code, 1892, it was stated that the evidence shewed that any person could easily shoot a turkey under the circumstances :—Held, that it was a question for the jury whether the making of that condition was intended as requiring a real contest of skill, or merely as a device for covering up a scheme for disposing of the property by lot; that the verdict of guilty involved a finding that it was merely a device; that the evidence set out in the case justified that finding; and that the conviction should be affirmed. REX v. JOHNSON, 22 Occ. N. 125, 14 Man. L. R. 27.

3. **Indictable Offence** — CRIMINAL CODE, 1892 — R. S. C. 159 — R. S. Q. ART. 292. — 53 VICT. c. 36 (QUE.).]—Per Girouard, J., dissenting. In Canada before the Criminal Code, 1892, lotteries were mere offences or contraventions and not crimes, and consequently the Act of the Quebec Legislature was constitutional. L'ASSOCIATION ST. JEAN-BAPTISTE v. BRAULT, 30 S. C. R. 598.

4. **Provincial Legislation on Ultra Vires.]** —A provincial legislature has no power to authorize a lottery, such legislation being an undue interference with the criminal law of the Dominion. BRAULT v. ST. JEAN BAPTISTE ASSOCIATION, 4 C. C. C. 284, 30 S. C. R. 598.

5. **Sale of Tickets** — QUESTION OF SKILL INVOLVED — A MATTER FOR THE JURY — CODE SEC. 205.]—The accused was indicted and convicted under sec. 205, for having unlawfully caused to be advertised and published a scheme for disposing of a horse, etc., and for having unlawfully disposed of lots, cards, etc., as a device for disposing of a horse, etc. The modus operandi advertised and practised was that each purchaser of goods to a certain amount received a ticket, and upon a drawing by chance among the holders of tickets, the winner was to get a horse and buggy, if he should shoot a turkey at a distance of fifty yards in five shots. The evidence showed that any person could easily shoot the turkey under the circumstances :—Held, that it was a question for the jury whether the interposition was intended for a real contest, or as a device for covering up a scheme to dispose of the property by lot, and upon the evidence they were justified in finding as they did. R. v. JOHNSON, 6 C. C. C. 51, 14 Man. L. R. 27.

6. **Specific Property** — EXCEPTION OF WORKS OF ART — CODE SEC. 205.]—Under sec. 205 of the Criminal Code the disposal "of any property" by chance and not merely "specific property" is contrary to the statute. The essence of the enactment lies in the disposal of any property by any mode of chance, and it would be an easy evasion if the statute could be got rid of, by designating no particular thing, although the winner would be able to exercise his choice among the available prizes offered. 2. The exception contained in s.-s. (c) relating to the distribution of works of art, among members of an incorporated society established for the encouragement of art, does not apply where money might be had instead of pictures by the holders of the winning tickets, even if there was uncertainty in

the getting of the money on the tickets, because of it being reserved for the option of the society. R. v. LORRAIN, 2 C. C. C. 144, 28 O. R. 123.

See also GAMING.

MAGISTRATE.

See JUSTICE OF THE PEACE.

MALICIOUS INJURY TO PROPERTY.

1. **Amount of Injury Done** — DAMAGES — COMPENSATION — COSTS — ILLEGAL ITEMS — AMENDMENT — DEFECTS ON FACE OF CONVICTION — EXCESSIVE IMPRISONMENT.]—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 $100.00 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 $5.00 as a penalty, together with $50.00 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 $50.00 be treated as part of the penalty, inasmuch as the effect of such an amendment would be to punish the offender, not according tó 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 Vic. (1889), c. 45, s. 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 section 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 followed. THE QUEEN v. TEBO, 1 Terr. L. R. 196.

2. **Bona Fide Belief of Right.**]—Defendant B. had buried a child in a graveyard near the remains of his own father. The complainant Nichol had a parcel of ground which the sexton of the church had appropriated to his exclusive use, without any authority from the incumbent or churchwardens. The complainant subsequently extended his fence, by the like consent of the sexton only, and enclosed more ground so that the fence crossed diagonally over the grave of the child. Defendant remonstrated, but obtaining no redress, nor the removal of the fence, proceeded to remove it himself. In process of doing so he broke a marble pillar of complainant's fence, for which he was summoned before the police magistrate of St. Thomas, for "wilfully and maliciously" destroying a fence under s. 29 of 32 & 33 Vict. c. 22 (D.). He was fined $10, and ordered to pay for the damages. From this conviction defendant appealed to the general sessions :—Held, that although defendant was guilty of trespass, for which he might be mulcted in damages in a civil action, he was not liable to a fine, and that, acting under a claim of right, the act was not necessarily malicious. REGINA v. BRADSHAW, 13 C. L. J. 41.

3. **Bona Fide Belief of Right.**]—The honest belief of a person charged with an offence under R. S. O. 1897, c. 120, s. 1 (unlawfully trespassing), or the Criminal Code, s. 511, (wilfully committing damage to property), that he had the right to do the act complained of, is not sufficient to protect him; there must be fair

and reasonable ground in fact for that belief. The usual reservation in a patent of land bounded by navigable water of "free access to the shore for all vessels, boats and persons," gives a right of access only from the water to the shore, and in this case it was held that a person who had broken down fences and had driven across private property to the shore, could not successfully assert, when charged under R. S. O. 1897, c. 120, s. 1, and the Criminal Code, s. 511, that he had "acted under a fair and reasonable supposition of right" in so doing REGINA v. DAVY, 27 A. R. 508.

4. **Bona Fide Belief of Right.**]—TRIAL BY JURY — MALICE.]—On the 8th of November, 1875, an information was laid against B. before the police magistrate of St. Thomas, by one N., under 32 & 33 Vict., c. 22, (D.), for having unlawfully and maliciously broken and injured a fence round the land of N. The defence set up was, that the fence encroached upon B's. land, but there was evidence which, if believed, went the shew that B. did not commit the injury under a bona fide exercise or belief of right; and the magistrate convicted and fined him. B. appealed to the general sessions of the peace, where neither side asked for a jury; the court urged them to have one, but the respondent N., refused; and the court, having heard the evidence, decided that B. acted, though mistakenly, under a bona fide belief that he had a right to remove the fence, and without malice; and ordered the conviction to be quashed with costs. N. then applied to quash the order, upon the ground amongst others, that the case could not be tried without a jury; but, held, that 32 & 33 Vict. c. 31, s. 66 (D.), which authorizes the court to try without a jury, is within the powers of the Dominion Parliament, and that the case having been properly before the sessions, this court could not review their decision upon the merits. Section 66 of 32 & 33 Vict., c. 22, does not dispense with proof of malice in such cases, but, read in connection with s. 29, merely means that the malice need not be conceived against the owner of the property injured. REGINA v. BRADSHAW, 38 U. C. R. 564.

5. **Form of Conviction.**]—A conviction, purporting to be under C. S. C. c. 93, s. 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, &c., without alleging damages to any property, real or personal, and without finding damage to any amount was held bad, and quashed. REGINA v. CASWELL, 20 C. P. 275.

A summary conviction under R. S. C. C. 168, s. 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, &c., and what the particular nature and quality of the property, real and personal, was in and upon which such damage, &c., was committed; and the conviction was quashed for uncertainty. REGINA v. SPAIN, 18 O. R. 385.

6. **Form of Information.**]—Quære, would a complaint against A. B. that he "was seen in the act of destroying or injuring private property", without alleging that the property belonged to another person, or that the act was wilfully or maliciously done, authorize a warrant as for a malicious injury to property under 4 & 5 Vict. c. 26. POWELL v. WILLIAMSON, 1 U. C. R. 154.

7. **Killing Cattle** — REBUTTING IMPLIED MALICE — MENS REA — VERDICT — REFUSAL OF JUDGE TO RECEIVE.] On a charge of unlawfully and malicious by killing cattle (under R. S. C. c. 43), 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 prisoner being disproved. Power of trial Judge to refuse a particular verdict considered. REGINA v. MENNEL, 1 Terr. L. R. 487.

8. **Killing Cattle** — REBUTTING IMPLIED MALICE — MENS REA — VERDICT-REFUSAL OF JUDGE TO RECEIVE.]—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 trial Judge to refuse a particular verdict considered. THE QUEEN v. MENNELET AL, 1 Terr. L. R. 487.

9. **Malicious Injury to Animal** — 3rd. R. S., c. 169, s. 22.]—Defendant was convicted of having, in a secret and clandestine manner cut off the hair from the manes and tails of two horses, the property of one William Ballam :—Held, that the offence was covered by sec. 22, chap. 169, R. S., 3rd series, under which defendant was indicted. Also, that the offence having been committed wrongfully and intentionally without just cause or excuse, and with full knowledge as to the ownership of the property, malice might be fairly inferred. QUEEN v. SMITH, 1 N. S. D. 29.

10. **Police Court Information.**]—Held, that maliciously destroying an information of record or the police court is a felony within 32 & 33 Vict., c. 21, s. 18. REGINA v. MASON, 22 C. P. 246.

MALICIOUS NEGLECT.

1. **Malicious Neglect to Provide Necessaries** — CHILD'S DEATH — WANT OF MEDICAL AID — AIDING AND ABETTING.]—The prisoner, an elder of the sect "Catholic Christians in Zion," or "Zionites," was indicted for aiding and abetting and counselling in his actions one who neglected to provide two of his young children under six years of age with medical attendance and remedies when sick with diphtheria. Both children died. The prisoner knew the children had diphtheria, and knew that it was a dangerous and contagious disease; that the ordinary remedies would have prolonged their lives, and in all probability would have resulted in their complete recovery :—Held, that medical attendance and remedies are necessaries within the meaning of ss. 209 and 210 of the Criminal Code, and anyone legally liable to provide such is criminally responsible for neglect to do so. So also at common law. 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. REX v. BROOKS, 22 Occ. N. 105, 9 B. C. R. 13.

MALICIOUS PROSECUTION.

Belief of Informant on Charge of Theft.]—An informant on a charge of theft will be liable in an action for malicious prosecution for damages if the jury finds that he did not believe that the property had been taken without any belief in the right to take the property. PRING v WYATT 7 C. C. C. p. 60, 5 O. L. R. 505, 23 Occ. N. 191.

See also JUSTICE OF THE PEACE.

MANDAMUS.

1. **Application for** — CIVIL PROCEEDING — PROCEDURE (ONT.).]—An application for a mandamus made under R. S. O. 1897, c. 88, s. 6, is a civil and not a criminal proceeding although the act which the justice is ordered to do, may be the taking of an information for a criminal offence. The tribunal in which the proceedings are to be taken is freed by the Judicature Act and the Rules of court. REX v. MEEHAN, (No. 1), 5 C. C. C. 307, 3 O. L. R. 361.

2. **Compelling Sheriff to Bring Person Again Before Judge to Re-Elect.**]—The sheriff is not under any obligation or duty to bring prisoner before the Judge a second time, in order that he may re-elect and relief from the effect of election must be sought in some other form of application than mandamus. REGINA v. BALLARD, 1 C. C. C. 96, 28 O. R. 489.

3. **Court Stenographer** — EVIDENCE — TRANSCRIPT OF.]—The court reporter is a public official and must conscientiously record the evidence taken, and he is bound when the proper steps are taken by applicants to give the persons entitled true copies of that evidence. He cannot be compelled to give more than a full and complete copy, of all the notes taken by him at the trial. Whether he did or

did not report the same fully at trial, or his competency as a stenographer are matter which cannot be dealt with on an application for a mandamus. R. v. Campbell, 10 C. C. C. 328.

4. **Decision on Legal Merits** — Right to Mandamus.]—The court holding there had been a decision by the county court Judge on the legal merits, the court had no right to decide or inquire whether such decision was right or wrong and mandamus refused. Strang v. Gellatly, 8 C. C. C. 17, 24 Occ. N. 199.

5. **Illegal Voting** — Municipal Elections — Indictable Offence — Information — Police Magistrate — Mandamus.]—Voting in more than one ward at a municipal election by general vote, contrary to the provisions of 1 Edw. VII., c. 26, s. 9, (O.), is an indictable offence, and mandamus lies to a police magistrate having territorial jurisdiction, to compel him to consider and deal with an application for an information for such an offence. In re Rex v. Meehan, 22 Occ. N. 179, 3 O. L. R. 567, 1 O. W. R. 136, 248.

6. **Magistrate Declining to Exercise Discretion.**]—Where a magistrate decides erroneously that he has no jurisdiction to receive an information, a mandamus will lie to compel him to do so; but when he has considered the material on which the application is based and refused to grant the summons, the court will not interfere by mandamus. Rex v. Meehan, (No. 2), 5 C. C. C. 312, 3 O. L. R. 567.

7. **Magistrate** — Indictable Offence — Warrant.]—A mandamus will not be granted to compel a magistrate to issue a warrant upon an information alleging an indictable offence, where the magistrate is of opinion that a case for so doing has not been made out after hearing the allegation of the complainant. Thompson v. Desnoyer, 3 C. C. C. 68, Q. R. 16 S. C. 253.

8. **Magistrate** — Judicial Act — Inferior Court.]—Passing sentence by a magistrate upon an offender properly convicted, is a judicial act, even where there is only a definite and particular penalty prescribed and a mandamus will not lie for the purpose of compelling an inferior court to render a particular judgment in accordance with the views of the higher court. Rex v. Case, 7 C. C. C. 204, 6 O. L. R. 104, 23 Occ. N. 279.

9. **Penalty** — Remission of by Minister of Marine — Distress for Costs.]—A rule for mandamus was granted to compel a justice to issue an execution for costs in a case wherein the defendant had been convicted and fined under the Fisheries Act for illegal fishing. The Minister of Marine remitted both the fine and costs. Held, per Tuck, C. J., Hannington and McLeod, JJ., that the Minister had power to remit the fine but not the costs, and a mandamus would lie to compel the justice to issue execution. Held, per Barker and Gregory, J.J., that the fine having been remitted, the remission of the penalty left the prosecutor without any remedy for recovery of his costs. Held, per Landry, that penalty included both fine and costs. Ex Parte Gilbert, 10 C. C. C. 38.

10. **Publicity of Records.**]—A mandamus will lie to compel the clerk of the peace to give a certified copy or exemplification of an indictment with endorsement of acquittal thereon (in order that the same may be used in an action for malicious prosecution) without the fiat of the Attorney-General. Attorney-General v. Scully, 6 C. C. C. 167, 2 O. L. R. 315.

11. **Record to Acquittal** — Right to Mandamus.]—The accused on acquittal in the court of general sessions in Ontario is entitled to a copy of the record of such acquittal, and a mandamus will lie to the clerk of the peace to enforce delivery of same. Rex v. Scully, 5 C. C. C. 1, 2 O. L. R. 315.

12. **Repair of Bridge.**]—As to whether indictment or mandamus is the appropriate remedy to compel a municipality to repair an existing bridge or erect a new one. See In re Townships of Moulton and Canborough and County of Haldimand, 12 A. R. 503.

13. **To Compel Issue of Warrant Committing Minor to Reformatory.**]—A mandamus will lie to compel the chairman of the governing board of the reformatory prison known as the 'Boy's Industrial Home' near the city of St. John to issue a warrant to bring and commit to the

home a prisoner sentenced at a circuit court to a term of imprisonment in that establishment, the words 'authorized to issue' in sec. 6 of 56 Vict. (Can.), ch. 33, and may thereupon issue' in sec. 9 of 56 Vict. (N. B.), ch. 16, being construed as obligatory. RE GOODSPEED, 7 C. C. C. 240, 36 N. B. R. 91.

14. **To Compel Magistrate to Issue Warrant.**] — Where a police magistrate in receiving an information had heard and considered the allegations of the informant, and had come to the conclusion that cause for issuing a warrant or summons had not been made out, the court will not intervene by mandamus to compel the magistrate to issue a warrant or summons. RE E. J. PARKE, 3 C. C. C. 122.

See also JUSTICE OF THE PEACE.

MANITOBA GRAIN ACT.

1 **Application for Cars** — ORDER BOOK — DISTRIBUTION OF CARS — ELEVATORS — LOADING PLATFORMS]—The Dominion statute, 63-64 Vic. 1899, c. 25, amending the General Inspection Act R. S. C. 1886, c. 99, enacts (schedule) that the whole of Manitoba and the North West Territories, and that portion of Ontario west of and including the then existing district of Port Arthur, should be known as the Inspection District of Manitoba. The Manitoba Grain Act (the short title of 63-64 Vic. 1900, c. 39, intituled "an Act respecting the grain trade in the Inspection District of Manitoba"), contains, as indicated by sub-headings, provisions respecting a warehouse commissioner—elevators and terminal warehouses—country elevators, flat warehouses and loading platforms—commission merchants—general provisions. This Act is amended by 2 Edw. VII., 1902, c. 19 :—Held, (1) on admission of counsel, where a farmer who is not an elevator owner, lessee or operator, has grain stored in a special bin in a farmers' elevator at a railway station where grain is shipped, and has also grain stored in another elevator at the same point in common with other grain, for which he holds storage tickets; that it is not a violation of the Manitoba Grain Act for the station agent to refuse to recognize such farmer as an applicant, or to recognize his order in the order book for a car or cars to ship his said grain ; (2) Where a farmer has made order for cars in the order book at the station, and all applicants for cars who had made order prior to his order in such book, had each obtained one car, but the cars so distributed were not sufficient to fill the orders of such prior applicants, while the farmer had not yet been allotted a car by reason of the shortage; and the agent out of the next lot of cars which arrived, refused to award the farmer a car, but there being a sufficient number of prior applicants, whose orders had not been entirely filled to exhaust the such next lot of cars, awarded out of such cars one to each prior applicant, who had already received one car—that this was a violation to the Act. (3) If each of the prior applicants as above mentioned had been supplied with one car at the time when the farmer gave his order, but on the day previous to the farmer's application there had been a surplus of cars after each prior applicant had been given one car, and the agent, in the distribution of the surplus cars had begun with the first applicant and distributed the cars so far as they would go, giving two or three to each of the prior applicants, but their order nevertheless remained unfilled, and if on the day of the farmer's application additional cars arrived to be loaded, and the agent declined to allot a car to the farmer, but allotted a car to each of the prior applicants, thus exhausting the supply—that this was not a violation of the Act (4) Where a farmer having grain made order for one car in the order book, requiring it to be placed at the loading platform for the purpose of being loaded and the agent allotted a car to each of the elevator companies having elevators at the same station, but whose orders were subsequent to those of the farmer—that this was a violation of the Act THE KING v. BENOIT, 5 Terr. L. R. 442.

2. **Offences Against** — STATION AGENT —ALLOTTING CARS TO SHIPPERS.]—Where a farmer who is not an elevator owner lessee, or operator, has grain stored in a special bin in a farmer's elevator at a railway station where grain is shipped, and has also grain stored in another elevator at the same point, in common with other grain, for which he holds storage tickets, it is not a violation of the Manitoba Grain Act and amendments for

the station agent to refuse to recognize the farmer as an applicant and to recognize his order in the order book for a car or cars to ship out his grain. 2. Where a farmer has made an order for cars in the order book at the station, and all applicants for cars who had made order prior to his had each obtained one car, but not sufficient cars to fill the orders, while the farmer had not yet been allotted a car by reason of the shortage, and the agent out of the next cars which arrived refused to award him a car, but awarded them to those who had already received each one car, there was a violation of the Act. 3. Where each of the prior applicants had been supplied with one car at the time when the farmer gave his order, but on the day previous there had been a surplus of cars after each prior applicant had been given one, and such surplus was distributed among them, but their orders still remained unfilled, it was not a violation of the Act for each agent to allot to each of the prior applicants a car from a lot which arrived to be loaded on the day of the farmer's application and to refuse him one. 4. Where a farmer who had grain to ship made order for one car in the order book, requiring it to be placed at the loading platform to be loaded, and the agent allotted a car each to the elevator companies having elevators at the point, but whose orders were subsequent to the farmer's and refused to allot him one, there was a violation of the Act. IN RE CASTLE AND BENOIT, 23 Occ. N. 143.

MARRIAGE.

Offences Against Laws as to — MINISTER — "RELIGIOUS DENOMINATION"]—"The Reorganized Church of Jesus Christ of Latter Day Saints," is a religious denomination within the meaning of R. S. O. 1887, c. 131, s. 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 word of the statute "church and religious denomination" should not be construed so as to confine them to Christian bodies. REGINA v. DICKOUT, 24 O. R. 250.

See also HUSBAND AND WIFE.

MASTER AND SERVANT.

Criminal Liability for Act of Servant.]—The owner of the shop is criminally liable for any unlawful act done therein, in his absence, by a 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 or sale was an isolated one, wholly unauthorized by him and out of the ordinary course of his business. REGINA v. KING, 20 C. T. 246.

Master of Vessel — REFUSING TO PAY OR DISCHARGE SEAMEN — SUMMARY CONVICTION]—The master of a British ship of Canadian register within Canadian jurisdiction cannot be convicted for a criminal offence for refusing to pay a seaman his wages or to give him his discharge either under the Seamen's Act of Canada, ch 74, R. S., or under the Imperial Merchant Shipping Act, 1894. REX v. MEIKLE, 7 C. C.C. 369, 36 N. S. R. 297.

MEDICINE.

1. **Duty of Master to Provide** — NECESSARIES]—An accused who engages a boy under sixteen years of age under contract with the boy's guardian to furnish him with necessaries does not fall within section 210 of the Code which makes a parent, guardian or head of family criminally responsible for omitting without lawful excuse to provide necessaries for a child under sixteen years, and under section 211 the duty of a master or mistress to provide necessary food, clothing or lodging does not extend to medical aid. REGINA v. COVENTRY, 3 C. C. C. 541, (N.W . T.)

2. **Ontario Medical Act.**]—A conviction under the "Ontario Medical Act," R. S. O., 1877, c. 142, s. 40, for practising without being registered, was quashed, because in default of payment of the fine imposed, distress was also awarded :—Held, that s. 57 of 32 & 33 Vict., c. 51 (D.), does not apply, as by s. 46 of the Medical Act provision is made for enforcing payment. REGINA v. SPARHAM, 8 O. R. 570.

3. **Ontario Medical Act.**]—Held, that a justice of the peace, on a conviction under ss. 40 and 46 of R. S. O., 1877, c.

142, intituled an Act respecting the profession of Medicine and Surgery, has no jurisdiction on default by the defendant of payment of fine and costs, to direct his confinement for the space of one month, unless, in addition to the payment of the fine and costs, he paid the charges of conveying him to jail. REGINA v. WRIGHT, 14 O. R. 668.

4. **Ontario Medical Act.**]—A conviction under the Ontario Medical Act, R. S. O., 1887, c. 148, s. 45, for practising medicine for hire :—Held, bad for uncertainty in not specifying the particular act or acts which constituted the practising. Re Donelly, 20 C. P. 165; Regina v. Spain, 18 O. R. 244, followed. And the court refused to amend, and quashed the conviction where the practising consisted in telling a man which of several patent medicines sold by the defendant was suitable to the complaint which the man indicated, and selling him some of it. Costs against the informant refused. REGINA v. SOMERS, 24 O.R. 244 followed. REGINA v. COULSON, 24 O. R. 246.

5. **Practising** — EVIDENCE OF.]—The single act of practising medicine to one person on one day will not amount to a practising of medicine The Acts of practising must be sufficiently approximate in point of time to afford evidence of practising rather than tending to establish the commission of a separate offence. REX v. LEE, 4 C. C. C. 416.

6. **Practising Medicine Without License** — ONTARIO MEDICAL ACT.]—A conviction for practising medicine without license or being registered as a medical practitioner, under R. S. O., 1877, c. 142, s. 40, omitted to add "for hire, gain, or hope of reward," and it did not appear that the defendant had appeared and pleaded, and that the merits had been tried, and that the defendant had not appealed, or that the conviction had been affirmed on appeal, so that the 32 & 33 Vict., c. 31, s. 73 (D.), was not applicable : —Held, that the conviction must be quashed. A conviction, should, if possible, state the facts necessary to bring it within that section, and it should not be drawn up until the four days for giving notice of appeal have elapsed. REGINA v. HESSEL, 44 U. C. R. 51.

7. **Proof of Illegal Practise of.**]—The bare proof of one individual act would not be sufficient to sustain a conviction for illegally practising medicine, though each individual act would afford cumulative evidence of practising. REGINA v. WHELAD, 4 C. C. C. 277.

See also PRACTISING MEDICINE.

MENACES AND THREATS.

1. **Accusation.**]—The word "accuses" in s. 405 of the Criminal Code providing for the punishment of any one who, with intent to extort or gain anything from any person, accuses that person or any other persons of certain offences, includes the accusing of a person by laying an information under s. 558 of the Code. REGINA v. KEMPEL, 31 O. R. 631.

2. **Crim. Code 404** — MEANING OF MENACES.]—A demand of money of a hotel keeper with a threat to have them prosecuted for a second offence under the Liquor License Act if not paid, is a demand of money with menaces with intent to steal said money within the meaning of Crim. Code sec. 404. REGINA v. GIBBINS, 1 C. C. C. 340, 12 Man. L. R. 154.

3. **Demand for Goods** — WANT OF REASONABLE OR PROBABLE CAUSE.]—The demand and menaces are questions of fact, and the onus of proof is on the prosecution to show the demand was made without any reasonable or probable cause. If the Judge's charge was ambiguous so that the jury was misled into thinking that want of reasonable or probable cause was a question of law, a new trial ought to be granted. REGINA v. COLLINS, 1 C. C. C. 48, 33 N. B. R. 429.

4. **Demanding Money Due.**]—Demanding with menaces money actually due, is not a demand with intent to steal, under 4 & 5 Vict. c. 25, s. 11. REGINA v. JOHNSON, 14 U. C. R. 569.

5. **Demanding Property with Menaces**—INTENT TO STEAL.]—By s. 404 Criminal Code, 1892, "Everyone is guilty of an indictable offence and liable to two years' imprisonment who, with menaces, demands from any person, either for himself or for any other person, anything capable of being stolen with intent to steal it." The defendant was convicted by a magis-

trate of an offence against this enactment. The evidence was that the defendant went, as agent for others, to the complainant's abode to collect a debt from him; that the defendant threatened the complainant that if the latter did not pay the debt, he would have him arrested; that the defendant demanded certain goods, part of which had been sold to the complainant by the defendant's principals, on account of which the debt accrued, but upon which they had no lien or charge; and the complainant, as he swore, being frightened by the threats and conduct of the defendant, acquiesced in the demands for the goods part of which the defendant took away and delivered to his principals, who took the remainder. The defendant swore that he demanded and took the goods as security for the debt which he was seeking to collect; but the complainant said nothing as to this : —Held, that there was no evidence of intent to steal. Conviction quashed. REGINA v. LYON, 29 O. R. 497.

6. **"Offence" against Provincial Law.**]—Information was laid against the defendant for writing a letter to M., threatening to accuse him of an "offence" against the Liquor License Act, a Provincial Act, with intent to extort money. On motion for a writ of prohibition to prevent a magistrate from hearing the information: — Held, that the word "offence" as used in the Criminal Code s. 406, includes breaches of Provincial law. REGINA v. DIXON, 28 N. S. R. 82.

7. **Reasonable Cause.**]—32 & 33 Vict. c. 21, s. 43 (D.), makes it a felony to send "any letter demanding of any person with menaces and without reasonable and probable cause," any money, &c. :—Held, that the words "without reasonable and probable cause," apply to money demanded, and not to the accusation threatened to be made. REGINA v. MASON, 24 C. P. 58.

8. **Threatening Letter** — ACCUSATION OF ABORTION.]—A crime punishable by law with imprisonment for a term 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. c. 173, s. 3. REGINA v. POPPLEWELL, 20 O. R. 303.

9. **Threatening Letter** — COMPARISON OF HAND WRITINGS — MAY BE MADE BY JURY.]—On trial of the accused for sending a threatening letter to the prosecutor, the learned Judge in charging the jury, after all the evidence was in, allowed them to compare the threatening letter with one admitted to have been written by the accused, and which had been put in evidence by the defence on a former trial, and to draw their own conclusions as to the identity of authorship. On a case reserved. — Held, that all that is necessary to enable a jury to compare a disputed with an admitted writing is that the two should be in evidence for some purpose in the cause, and that a document having been once received, is before the Court for all purposes at every subsequent stage of the proceedings, without being tendered a second time. Per Weatherbe and Henry, J.J., dissenting, that in the absence of proof of handwriting the letter was improperly submitted. (NOTE — The majority were, however, of the opinion that there was ample proof of guilt, apart from any result reached by the comparison of the letters). REGINA v. DIXON, 29 N. S. R. 462.

10. **Threats** — DEMANDING MONEY WITH INTENT TO STEAL.]—The prisoner was convicted under sec. 404 of the Crim. Code, 1892, of having demanded money of the prosecutor with menaces with intent to steal the same, and a case was reserved for the opinion of the Court on the question, whether the evidence was sufficient to prove the crime charged. The prisoner had demanded $75.00 from the prosecutor under threat of having him prosecuted for an infraction of the Liquor License Act:—Held, that any menace or threat that comes within the sense of the word menace in its ordinary meaning, proved to have been made with the intent to steal the thing demanded, would bring the case within sec. 4 4, and that it need not be one necessarily of a character to excite alarm, but it would be sufficient if it were such as would be likely to affect any man in a sound and healthy state of mind ; and the question, whether there was the intention to steal the money demanded, is one of fact and not law. Conviction affirmed. REGINA v. GIBBONS, 12 Man. L. R. 154.

11. **Threats** — LETTER DEMANDING MONEY.] — R. S. C. 173, s. 1, provides that "Every one who sends, ... know-

ing 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 prisoners 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. SOUTHERTON, 6 East, 126 followed. REGINA v. McDONALD and VANDERBERG, 8 Man. L. R. 491.

MENS REA.

1. **Bigamy** — CODE SEC. 7, 275.]—A guilty mind is necessarily implied as an essential ingredient of the offence of bigamy, under the Code; if therefore the accused had an honest and reasonable belief that she was unmarried before she went through the form of marriage (the subject of the charge) it would be a good defence. REX v. SELLARS, 9 C. C. C. 153

2. **Criminal Intent** — SIMILAR ACTS.]—On trial of a charge of theft accomplished by a peculiar method of presenting a bank bill of large denomination in making a small purchase, and managing to receive back too much change :—Held, that evidence of a similar practice in other cases was receivable to show criminal intent. REGINA v McBERNY, 29 N. S. R. 327.

3. **Fisheries Act** — POSSESSION OF STURGEON.]—Where a fishery officer found young sturgeon under four feet long on the premises of the accused, it was held that there was no offence under articles 8 and 11 of the regulations passed under the provisions of "The Fisheries Act", R. S. C., 1886, c. 95, prohibiting the fishing for, catching, killing, buying or selling, or having in possession of sturgeon under four feet in length, where the Crown had failed to show or suggest connivance or wilful blindness on the part of the accused. THE QUEEN v. VACHON, 3 C. C. C. 558.

4. **Fruit Marks Act** — FRAUD IN PACKING APPLES.]—Defendant was convicted for selling apples packed in packages in which the face surface gave a false representation of the contents of the packages. The mere exposing for sale under such conditions held an offence under sec. 7, of 1 Edw. VII., c. 27, irrespective of whether the possessor knew of the fraudulent packing, or was negligently ignorant of it. REX v. JAMES, 6 C. C. C. 159, 4 O. L. R. 537.

5. **Intention Inferred from the Act.**] Where a prisoner is indicted for feloniously wounding with intent to do grievous bodily harm, the intention may be inferred from the act. QUEEN v. LEDANTE, 2 N. S. D. 401.

6. **Mens Rea.**]—If a man knowingly does acts which are unlawful, the presumption of law is that the mens rea exists; ignorance of law will not excuse him. REGINA v. MAILLOUX, 3 Pug., N. B. R. 493.

7. **Obscene Matter** — KNOWINGLY DISTRIBUTING — CODE SEC. 179.]—The word "knowingly" in section 179 of the Code makes it incumbent on the prosecution to give some evidence of knowledge of the contents of the obscene matter as being possessed by the defendant. R. v. BEAVER, 9 C. C. C. 415, 9 O. L. R. 418.

8. **Sale of Liquor to Interdicted Person.**]—In order to sustain a conviction under the Liquor License Act (1896) New Brunswick, for the sale of liquor to a person interdicted it is not necessary to prove knowledge by the liquor dealer of the identity of the person supplied with the liquor. REGINA v. DIAS, 1 C. C. C. 534.

9. **Scope of Examples under Form F. F.**] —Whilst the forms given in F. F. of the Code either directly or indirectly allege the intent, where the intent it necessary to constitute the offence, their effect was not intended to be confined to the offences stated in them. THE QUEEN v. SKELTON, 4 C. C. C. 467.

10. **Setting Fire** — ALLEGATION.]—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. c. 29 (Malicious Injuries to Property), is good,

and it is not necessary to allege the intent to injure or defraud the prosecutor. REGINA v. SOUCIE, 1 P. & B., N.B.R. 611.

11. **Stealing** — DEMANDING POSSESSION OF GOODS BY MENACES — INTENT TO STEAL.]—Although the demanding and obtaining possession of goods from a debtor by a creditor through menaces and threats that the debtor would be arrested, is reprehensible where resorted to for the purpose of obtaining and holding the goods as security for a debt actually owing by the debtor to the creditor, yet there is no "intent to steal" within the meaning of sec. 404 of the Criminal Code, and a conviction entered in such case, even where the threat of arrest was made without any honest belief that the debtor was liable to arrest will be set aside. Neither does the securing possession of goods in such case amount to stealing or theft within the meaning of sec. 305 of the Criminal Code, since being taken as security for a debt, it is done with a colour of right. R. v. LYON, 2 C. C. C. 242.

12. **Unnecessary in Omission of Statutory Duty.**]—Where it is a simple omission to perform a statutory duty, a mens rea, in the ordinary sense of that term, or the absence of good faith, is not necessary to justify a verdict of guilty. An intentional omission to do what the statute requires to be done is sufficient. REX v LEWIS 7 C. C. C. 261. 6 Ont. L.R. 132, 23 Occ. N. 257.

MIDWIFERY.

1. **Conviction for Practising Quashed.**]—A conviction reciting an offence against the Medical Act and containing a particular offence of practising midwifery upon a Mrs. R. and other women, within the prescribed period will be quashed, where the evidence does not amount to a practising within the meaning of the Medical Act in respect to the Mrs. R. and the addition of the words "and other women" does not meet the difficulty. REGINA v. WHELAN, 4 C. C. C. 277.

2. **Motion to Quash Conviction** — PRACTICE — DUTY OF JUSTICE TO RETURN DEPOSITIONS — CERTIORARI — MEDICAL PROFESSIONS ORDINANCE — PRACTISING MIDWIFERY.]—Section 888 of the Criminal Code provides for the return of convictions by justices into the court to which the appeal is given. Semble, apart from this provision it is the duty of justices to make return also of the depositions upon which the conviction is founded :—Held, that papers purporting to be the depositions relating to the conviction having been returned therewith, they should be assumed to be such depositions; that they were properly before the court, and a writ of certiorari was unnecessary. Section 60 of the Medical Profession Ordinance (C. O. 1898, cap. 52) provides : "No unregistered person shall practise medicine or surgery for hire or hope of reward; and if any person not registered pursuant to this Ordinance, for hire, gain, or hope of reward, practises or professes to practise medicine or surgery, he shall be guilty of an offence, and upon summary conviction thereof be liable to a penalty not exceeding $100. Held, that midwifery is not included in the terms "medicine and surgery," and therefore no penalty can be imposed for the practise of it by an unlicensed person. THE KING v. RONDEAU, 5 Terr. L.R. 478.

3. **Practising of.**]—Midwifery is not 'medicine' or 'surgery' within the meaning of The Medical Profession Ordinance, sec. 60 of the North-West Territories. R. v. RONDEAU, 9 C. C. C. 523, 5 Terr. L. R. 478.

MINOR.

1. **Physical Incapacity to Commit Crime under Age of Fourteen Years** —DISTINCTION BETWEEN MENTAL AND PHYSICAL INCAPACITY — CANADA CRIMINAL CODE SEC. 10-174 DISCUSSED.]—REGINA v. HARTLEN, 2 C. C. C. 12, 30 N. S. R. 317.

See also INFANTS.

MISCHIEF.

Crim. Code Secs. 481 and 507 — 'COLOR OF RIGHT'.]—In order to constitute the offence of doing wilful damage to a fence (Crim. Code sec. 507), legal justification and color of right must both be absent. (Crim. Code sec. 481 (2). 'Color of right' means an honest belief in a state of facts

which if it existed would be a legal justification or excuse. REX V. JOHNSON, 8 C. C. C. 123, 7 O. L. R. 525.

See also MALICIOUS INJURY TO PROPERTY.

MISDIRECTION.

1. **Conspiracy to Defraud** — CHALLENGING JURORS — COMMENT OF JUDGE — JUDGE'S OPINION OF EVIDENCE.]—1. A statement of the trial Judge to the effect that if counsel should continue to challenge every man who reads the newspapers "we will have the most ignorant jurors selected for the trial of this cause," is a misdirection sufficient to constitute a ground for appeal. 2. Where the trial Judge stated to the jury that "about forty or fifty witnesses have been examined for the purpose of establishing the good character of the prisoner. It is very strange that it takes forty or fifty witnesses to establish his good character," it was held not a misdirection. 3. The trial Judge may give his own appreciation of the evidence to the jury which may or may not be accepted by them. R. v. LEWIS, 6 C. C. C. 507, 5 O. L. R. 509.

2. **Manslaughter** — JUSTIFICATION — OMISSION IN JUDGE'S CHARGE — CODE SEC. 744.]—On the trial of the accused on an indictment for murder, the Judge directed the jury that to justify or excuse the homicide, the prisoner must have had reasonable grounds for apprehending imminent peril to his life, or the lives of his family; and omitted to direct the jury on the other ground of the defence, that it was also equally a justification, when the act was committed under the fear of grievous bodily harm being inflicted, causing a reasonable apprehension in the mind of the accused that his life was in immediate danger, where, as in this case, the original assault was wholly unprovoked. The rule in civil cases that where an objection was not taken to the charge at the trial, it is not afterwards open to counsel to raise it on appeal, is not applicable to criminal cases, where a substantial wrong has been occasioned :—Held, that omission in the charge constituted a substantial wrong or miscarriage entitling accused to a new trial. R. v. THERIAULT, 2 C. C. C. 444, 32 N. B. R. 504.

3. **Reserved Case at Instance of Crown** — NEW TRIAL.]—Even where the court of appeal considers the direction of the trial Judge erroneous, it will not on a reserved case order a new trial, after an acquittal has been given; the cases are very rare in which the court would think it right to place the accused in jeopardy a second time for the same offence. R. v. KARN, 6 C. C. C. 479, 5 O. L. R. 704.

See also EVIDENCE — JUDGE'S CHARGE — NEW TRIAL.

MORTGAGE.

1. **Action on the Covenant** — FORECLOSURE UNDER TORRENS SYSTEM — RE-OPENING FORECLOSURE — CONSOLIDATION — BUILDING SOCIETY — LIEN ON SHARES — ADDING PARTIES.]—On 27th December, 1893, the defendant K. gave a mortgage to a Loan Co., to secure repayment of $400 and interest. On the 10th March, 1894, K. entered into an agreement to sell the mortgaged property to the defendant L., and the defendant L. paid the purchase price and became entitled to a conveyance from K. On the 4th June, 1895, the defendant K. gave a mortgage to the same company on certain other property to secure repayment of $2,600 and interest. At the time for executing these two mortgages the defendant K. subscribed for certain shares in the Loan Company, which he thereupon assigned to the company as security for repayment of the loans, and the mortgages on the respective pieces of land were given as collateral. Each mortgage contained a proviso that the company should have a lien upon all stock then or thereafter held in the company by the defendant, as security for repayment of the sum secured by the mortgage. The defendant K. allowed the payments on both mortgages to fall into arrear. The Loan Company took proceedings against K. upon the second mortgage for $2,600, and on the 24th day of August, 1899, obtained an order vesting the title in the property covered by it in themselves and debarring K. from all right to redeem. Subsequently by an assignment executed by the mortgagees under the authority of the Act incorporating the plaintiff company, the latter company became the owners of the assets

of the mortgagees, including the two mortgages given by K., and the land included in the second mortgage. On the 10th day of January, 1901, the plaintiff company brought action against K upon his covenant to pay contained in the mortgage for $2,600, and in their statement of claim offered to "re-open the foreclosure," and claimed the right to consolidate the two mortgages but did not add L. as a party. L. applied by counsel at the opening of the trial to be added as a party defendant, upon an affidavit setting forth the facts of his agreement with K. to purchase the property covered by the mortgage, of his having paid the price in full and K.'s inability to give title owing to the refusal of the mortgagees to discharge the $400 mortgage until the $2,600 mortgage was paid :—Held, that L. was entitled to be added as a party defendant under s. 36 of the J. O. (1898). Held, also, that as L. had bought prior to the mortgage for $2,600 he was entitled to all the equities of the mortgagor existing at the date of his purchase, and that his rights were subject only to the equities of the mortgagees existing at that date, and that since the mortgagees had no right of consolidation at that date, the second mortgage not having been yet executed, they had no right to consolidate the mortgages as against the defendant L. The word "foreclosure" as applied to proceedings to enforce a mortgage under the Land Titles Act in the Territories, is apt to mislead if it is sought to treat those proceedings as identical with "foreclosure" proceedings, where the mortgage conveys an estate in the land to the mortgage with a defeasance clause in case payments are made as provided. In the Territories the mortgagee has merely a lien until payment, and in case of default he can proceed to get an order either to sell the land or to have the title thereto vested in himself, and care must therefore be taken when endeavouring to apply to mortgages in the Territories the rules and principles laid down in other jurisdictions. Held, therefore, that the plaintiffs having obtained an order vesting in themselves the absolute title to the property covered by the mortgage for $2,600, they were in the same position as a mortgagee who has taken from the mortgagor a transfer of the mortgaged property where nothing appears showing any intention to reserve the right to sue; that, as there was no evidence to show that the plaintiffs intended when they obtained the vesting order to reserve the right to sue upon the covenant, the proper presumption was that the plaintiffs intended to take the land in full satisfaction and to abandon that right. Held, further, that the fact that the plaintiffs had elected to take a vesting order rather than an order for sale, and the fact that they had waited sixteen months before beginning action were circumstances tending to show affirmatively an intention to abandon their right to sue. Held, therefore, that the action be dismissed with costs as against both defendants. The question of the right of mortgagees to re-open a foreclosure considered. THE KING v. THE COLONIAL INVESTMENT AND LOAN COMPANY, 5 Terr. L. R. 371.

MUNICIPAL CORPORATIONS.

1. **Breach of By-law** — JURISDICTION OF JUSTICE OF THE PEACE WHERE DEFENCE CHARGE AGAINST POLICE MAGISTRATE]—A justice of the peace may hear a charge against a police magistrate for breach of city by-law, though statute states that no justice of the peace shall act as such for a city except in the case of illness, absence or at the request of the police magistrate. The fact that the offence is created by by-law does not preclude any person laying an information. REGINA V. CHIPMAN, 1 C. C. C. 81, 5 B. C. R. 349.

2. **By-Law** — NAME OF INFORMANT.]—Where proceedings are taken by the chief of police of a town and in his name for an offence against a by-law of the town should appear throughout the proceedings as the informant. RE BOTHWELL AND BURNSIDE, 31 O. R. 695.

3. **By-Law** — REGULATION OF LIVERY STABLES — CERTIORARI.]—The city of Stratford passed a by-law providing that no person hiring a vehicle from any one licensed under the by-law, shall refuse to pay for any damage done either to horse or vehicle while in the possession of such person. Defendant was convicted and fined under the penalty clause in the by-law :—Held, that the by-law was ultra vires of the municipal council. Held, per Meredith, that where an appeal

has proved abortive owing to the default of the magistrate in returning the deposit a writ of certiorari will be granted notwithstanding the abortive appeal. R. v. ALFORD, 10 C. C. C. 61.

4. **By-Laws** — SANITATION — OWNER AND TENANT — LIABILITY OF.]—Where a city charter authorized the making of by-laws for health and sanitation; with power to regulate and prevent the depositing of garbage, etc., and to require the owner or occupant to remove the same; and in default provided for fine or imprisonment; a by-law is valid in pursuance of such power, making the owners and tenants both liable. Notice to the owner is not necessary. BEAUCHAMP v. CITY OF MONTREAL, 10 C. C. C. 50.

5. **By-Law** — SCOPE AND UNREASONABLENESS OF — PROVINCIAL LAW.]—A municipal by-law as to Sunday Observance which includes all persons, and exceeds the provincial law in scope, is void as being too wide in its scope and unreasonable. REGINA v. PETERSKY, 1 C. C. C. 91, 5 B. C. R. 549.

6. **By-Law** — SUNDAY OBSERVANCE — INVALID FOR UNREASONABLENESS.]—By-law No. 281 of the city of Montreal held bad as being unreasonable in permitting the sale of tobacco in the form of cigars but in no other form, and arbitrary and unjust as favoring certain individuals only. CITY OF MONTREAL v. FORTIER, 6. C. C. C. 347.

7. **By-Law** — WHOLESALE DEALER DEFINED.]—A dealer who imports material out of which he manufactures clothing, and sells such articles in quantities, is a wholesale dealer, and is liable to the penalties of a by-law in default of taking out a wholesale license. REGINA v. PEARSON, 1 C. C. C. 337, 3 B. C. R. 325.

8. **Clerical Error** — AMENDMENT.]—On a complaint for the recovery of a penalty or for imprisonment in default of payment thereof the complaint alleging an infraction of a municipal by-law imposing a tax or license for owning, keeping or harboring a dog, a clerical error in the complaint and summons can be amended after proof has been made by the prosecution. BELL v. PARENT, 7 C. C. C. 465, Q. R. 23 S. C. 235.

9. **Costs on Appeal Against Conviction** — POLICE OFFICER.]—Costs cannot be awarded in favor of a municipal corporation on the dismissal of an appeal against a conviction for an offence under a municipal by-law, where a police constable, who was the informant, prosecuted in his own name. BOTHWELL v. BURNSIDE, 4 C. C. C. 450, 31 O. R. 695.

10. **Early Closing By-Law** — OPPRESSIVE — STATUTE.]—A by-law expressly authorized by statute and which follows closely the language of the statute cannot be declared unreasonable and oppressive unless the statute itself is declared ultra vires. REX v. SCHUSTER, 8 C. C. C. 354, 14 Man. R. 672.

11. **Illegal Conviction** — RESOLUTION AWARDING FUNDS TO ENFORCE — ULTRA VIRES.]—A municipal corporation cannot pass a valid resolution to pay the costs of putting an invalid conviction and warrant in force, as it is ultra vires of a corporation to award funds for illegal purposes. GAUL v. TOWNSHIP OF ELLICE, 6 C. C. C. 15, 3 O. L. R. 438.

12. **Invalid for Unreasonableness** — VACCINATION.]—A by-law making a proprietor, tenant, occupant, head or manager liable to fine or imprisonment should an employee under their control visit any manufacture, industrial establishment, factory, etc., unless such employee can produce a vaccination certificate, is unreasonable and oppressive, and, therefore, invalid. CITY OF MONTREAL v. GARON, 7 C. C. C. 358, Q. R. 23, S. C. 363.

13. **Market Fees** — RIGHT TO POSSESSION.]—The defendant, a market clerk in the employment of the city of Montreal, had collected divers sums from persons exchanging market stalls, by representing that these sums were due and payable to the city on the exchange of their stalls for others. No such sums were payable to the city, and none were paid over to the city by the defendant. On conviction of the defendant for theft from the city of Montreal :—Held, Bosse and Hall J.J. dissenting, that the conviction could not be sustained. To constitute the offence of stealing, whether under s. 305, or 319 (a), or 319 (c), of the Criminal Code, there must be a right existing at the time of the taking, either by the ownership

or the the possession of the property taken, which right the city of Montreal did not possess in the present case. REGINA v. TESSIER, 21 Occ. N. 48, Q. R. 10 Q. B. 45.

14. **Prohibition of Certain Acts** — INDICTMENT — CRIM. CODE 138.]—The Municipal Act (R. S. O. 1897, c. 223), as amended by 1 Edw. VII., c. 26 limiting every elector to one vote, but provides no penalty :—Held, that Crim. Code sec. 138 applies and renders the act of voting more than once an indictable offence. REX v. MEEHAN, (No. 2), 5 C. C. C. 312. 3 O. L. R. 567.

15. **Saloons** — SUNDAY OBSERVANCE BY-LAW.]—Under the Municipal clauses Act of British Columbia R. S. B. C. sec. 50 c. 144, there is no power in a municipality to pass a by-law closing any kind of licensed premises except saloons. Where a statute provides penalties for infraction under it, and the necessary machinery to enforce them, a by-law enacted to enforce such is not necessary, and it is incompetent for a municipality to pass such. HAYES v. THOMPSON, 6 C. C. C. 227, 9 B. C. R. 249.

16. **Secondhand Shops and Junk Stores.**] —R. S. O. 1887 c. 184, s. 436 (R. S. O. 1897 c. 223, s. 481), which provides that "the board of commissioners of police shall in cities license and regulate secondhand shops and junk stores," does not authorize a by-law to the effect that "no keeper of a secondhand store and junk store shall receive, purchase or exchange any goods, articles or things, from any person who appears to be under the age of eighteen years." Such a by-law is bad as partial and unequal in its operation as between different classes, and involving oppressive or gratuitous interferences with the rights of those subject to it without reasonable justification. REGINA v. LEVY, 30 O. R. 403.

17. **Transient Traders** — R. S. O., 1897, c. 223, s. 583.]—A person who engages a room at an hotel, and there procures orders for clothing to be made up from samples of cloth there displayed, and which clothing is to be made in another place, is not a transient trader within R.S.O. 1897, c. 223, s. 000, and no license is necessary. REX v. ST. PIERRE, 5 C. C. C. 365, 4 O. L. R. 76, 1 O. W. R. 365.

See also CERTIORARI — CONVICTION.

MURDER AND MANSLAUGHTER.

1. **Aiding and Abetting.**]—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 at Amherstburg, 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, inflicting a wound 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, B., swore that about six on 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 not 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. REGINA v. CURTLEY, 27 U. C. R. 613.

2. **Appeal — Indictment** — MISJOINDER OF COUNTS — EVIDENCE.]—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 court "a quo" that the indictment was sufficient. The prisoner was convicted of manslaughter in killing his wife, who died on the 10th November, 1881. The immediate cause of her death was acute inflammation of the liver, which the medical testimony proved might be occasioned by a blow or a fall, against a hard substance. 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, knocking her down and kicking her on the side. On the reserved questions viz., whether the evidence af 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 to submit to the jury that the disease, which caused her death, was produced by the injuries inflicted by the prisoner. THEAL v. THE QUEEN, 7 S. C. R. 397.

3. **Assault.**]—On an indictment for murder in the statutory form, not charging an assault, the prisoner, under 32 & 33 Vict. c. 29, s. 51 (D.), cannot be convicted of an assault; and his acquittal of the felony is therefore no bar to a subsequent indictment for the assault. REGINA v. SMITH, 34 U. C. R. 552.

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. IB.

4. **Attempt to Murder** — ASSAULT.]—At the quarter sessions the prisoner was found guilty on an indictment charging that she, on, &c., in and upon one B., in the peace of God and of our Lady the Queen then being, unlawfully did make an assault, and him, the said B., did beat and illtreat, with intent him, the said B., feloniously, wilfully, and of her malice aforethought, to kill and murder, and other wrongs to the said B. then did, to the great damage of the said B., against the form of the statute in such case made and provided, and against the peace, &c., A count was added for common assault. The evidence shewed an attempt to murder, but it was moved in arrest of judgment that the court had not jurisdiction, for that it was a capital offence under C. S. C. c. 91, s. 5:—Held, that the indictment did not charge a capital offence under that section, nor an offence against any statute, but that the conviction might be sustained as for an assault at common law. REGINA v MCEVOY, 20 U. C. R. 344.

5. **Credibility** — DIRECTION TO JURY.]—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 the 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. REGINA v. JONES, 28 U. C. R. 416.

Remarks as to the 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. IB.

6. **Death Caused by Drowning.**]—An indictment charged the prisoner, being the mother of an infant of tender age, and unable to take care of itself, with feloniously placing it upon the shore of a river in an exposed situation, where it was liable to fall into the water, and abandoning it there with the intent that it should perish; by means of which exposure the child fell into the river and was suffocated and drowned, of which suffocation, etc., the child died:—Held, that to support the indictment it was necessary to prove that the death was caused by drowning or suffocation. REGINA v. FENNETY, 3 All., N. B. R. 132.

The objections on a motion to arrest judgment are confined to the questions in the case stated by the Judge under the Act. IBID.

7. **Discrepancies between Evidence at Inquest and 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 the motion for a new trial, on the ground, among others, of surprise at these discrepances the court refused to interfere. REGINA v. HAMILTON, 16 C. P. 340.

8. **Dying Declaration.**]—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 replied "Yes you are," and she replied "God help me." He said from the manner of her answering he believed that 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 her if the prisoner had threatened her before he did it, and she said "Yes". She died about twelve hours after this, from the effect of her injuries. The parish clergyman, who was with her from six to nine o'clock on the morning of the 17th said he addressed her as a woman who he thought was dying, and that 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 the statement was admissable as a dying declaration; and that it made no difference that the second answer was given to a leading question. REGINA v. SMITH, 23 C. P. 312.

9. **Feloniously Striking** — CAUSE OF DEATH.]—An indictment charged the prisoner with feloniously striking the deceased on the head with a handspike, giving him thereby a mortal wound and fracture of which he died. It was proved that the death was caused by the blow on the head with the handspike, but that there was no external wound of fracture, the immediate cause of death being concussion of the brain, produced by the blow. Held :—that the evidence supported the indictment. REGINA v. SHEA, 3 All. N. B. R. 129.

10. **Joinder of Count for Manslaughter** — EVIDENCE OF PRIOR ASSAULTS.]—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, that the indictment was sufficient. THEAL v. THE QUEEN, 7 S. C. R. 397.

The prisoner was convicted of manslaughter in killing his wife who died on the 10th November, 1881. The immediate cause of her death was acute inflammation of the liver, which the medical testimony proved might be occasioned by a blow or a fall against a hard substance. 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 prissoner upon his wife within a year of her death, by knocking her down and kicking her in the side. On the reserved questions, viz., whether the evidence of assaults and violence committed by the prisoner upon the deceased, prior to the 10th of 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, 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. IB.

11. **Malice.**]—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. 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 on 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 continuation 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. REGINA V. MCDOWELL, 25 U. C. R. 108.

12. **Manslaughter** — AIDING AND ABETTING — CODE SEC. 61.]—Aid rendered to the principal offenders after the commission of the crime will not justify a verdict against the party so aiding, like as a principal offender under sec. 61. R. v. GRAHAM, 2 C. C. C. 388.

13. **Manslaughter** — BAIL — AFFIDAVIT BY CROWN PROSECUTOR THAT CRIME OF MURDER COULD BE PROVED.]—On an application for bail on a charge of manslaughter, though the Crown prosecutor made affidavit that he could prove on the trial that the homicide was done with malice aforethought, bail was granted. REX V. SPICER, 5 C. C. C. 229.

14. **Manslaughter** — COLLISION — GROSS NEGLECT — ABSENCE OF MALICE.]—In order to convict of manslaughter by reason of negligence of the captain of a boat alleged to have caused the collision, gross neglect must be shown, and such recklessness must appear, as will amount to a wilful attempt upon the lives of people when the latter are put to danger in consequence of acts of the accused. Absence of all unlawful or malicious intent or state of mind, excludes criminal responsibility in cases of accident. REGINA V. JOHN DELISLE, 5 C. C. C. 210.

15. **Manslaughter** — CULPABLE HOMICIDE — PAGAN INDIAN KILLING A SUPPOSED EVIL SPIRIT.]—Prisoner was a member of a band of pagan Indians who believed in the existence of an evil spirit clothed in human flesh and form called a Wendigo. It was reported to have been seen around the camp, and the prisoner was one of the guards placed on duty; he saw what he thought to be a tall human being running in the distance, and having challenged it three times, receiving no answer he fired. The object proved to be the prisoner's father. Death having ensued, prisoner was arraigned for manslaughter :—Held, on case reserved, that there was evidence on which the jury could find prisoner guilty of manslaughter, and that verdict having been brought it, it was not open to the court of appeal to reverse the finding. R. v. MACHEKEQUONABE, 2 C. C. C. 138, 28 O. R. 309.

16. **Manslaughter** — DEFINITION — FAILURE OF JUDGE TO INSTRUCT JURY — NEW TRIAL.]—It is the duty of the Judge on a criminal trial with a jury to define to the jury the crime charged and its cognate offences, if any. Failure to do so is a good cause for granting a new trial even though no objection to the Judge's charge was taken by counsel at the trial. REX V. WONG ON, 8 C. C. C. 423, 10 B. C. R. 555.

17. **Manslaughter** — DISTINGUISHED FROM OFFENCE BY CORPORATION CAUSING DEATH.]—An indictment against a corporation disclosing facts which would be sufficient to sustain an indictment for manslaughter against an individual, is no ground for quashing the indictment, the killing not being the offence charged, but merely the consequences of the offence, which by the indictment was criminal negligence in the discharge of duty. REGINA v. UNION COLLIERY CO., 4 C. C. C. 400, 31 S. C. R. 81.

18. **Manslaughter** — ENDANGERING HUMAN LIFE — INDICTMENT OF CORPORATION —Under s. 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 ground for quashing the indictment. As s. 213 provides no punishment for the offence, a corporation indicted under it is liable to the common law punishment of a fine. Judgment in 7 B. C. R. 247, 20 Occ. N. 289 affirmed. REGINA v. UNION COLLIERY CO., 21 Occ. N. 153. UNION COLLIERY CO. v. THE QUEEN, 31 S. C. R. 81.

19. **Manslaughter** — INDICTMENT AGAINST BODY CORPORATE — CRIM. CODE, s. 213 — FINE.]—Under s. 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 ground for quashing the indictment. As s. 213 provides no punishment for the offence the common law punishment of a fine may be imposed on a corporation indicted under it (B. C. Reps. 247) affirmed. UNION COLLIERY CO. v. THE QUEEN, 31 S. C. R. 81.

20. **Manslaughter** — INDICTMENT FOR WILL NOT LIE AGAINST CORPORATION.]—An indictment will not lie against a corporation for manslaughter, and even if a corporation could be indicted and convicted for such an offence, the conviction would be futile, for there is no provision of law under which any punishment could be imposed. REGINA v. GREAT WEST LAUNDRY CO., 3 C. C. C. 514, Man. 13 L. R. 66, 20 Occ. N. 217.

21. **Manslaughter** — MASTER AND SERVANT — NEGLIGENCE.]—The deceased, a lad 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 till 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 neighbour for a remedy for frost-bites, but did not disclose to him the serious condition the lad was in. On and after the 10th of 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, therefore, the prisoner was guilty of manslaughter. REGINA v. BROWN 1 Terr. L. R. 475.

22. **Manslaughter** — MISDIRECTION—WHERE EVIDENCE EXTENUATING HOMICIDE IS WITHDRAWN FROM THE JURY.]—New trial granted where evidence, which was proper to be considered for the purpose of determining whether the prisoner's offence should be reduced from murder to manslaughter was withdrawn from the jury. REGINA v. BRENNAN, 4 C. C. C. 41, 27 O. R. 659.

23. **Manslaughter** — PARENT AND CHILD — MEDICAL TREATMENT.]—The omission of a parent without lawful excuse to provide his child with medical treatment of the kind usual and proper to be provided in cases of sickness such as the child was proved to be suffering from, the death of the child being caused by such omission, is sufficient to warrant a verdict for manslaughter under section 210 of the Code. REX v. LEWIS, 7 C. C. C. 261, 6 Ont. L. R. 132, 23 Occ. N. 257.

24. **Manslaughter** — PARENT'S OMISSION TO PROVIDE NECESSARY MEDICAL TREATMENT FOR CHILD — LEGAL DUTY — LAWFUL EXCUSE — RELIGIOUS BELIEF — "NECESSARIES" — ADMISSION OF EVIDENCE — JUDGE'S CHARGE.]—The word "necessaries" in s. 209 of the Criminal Code, which enacts that "everyone who has charge of any other person unable by reason of detention, age, sickness, insanity, or any other cause, to withdraw himself from such charge, is under a legal duty to supply that person with the necessaries of life," includes proper medical aid, assistance, care, and treatment. And, therefore, where the jury found that the prisoner, a Christian Scientist, had without lawful excuse omitted to provide medical treatment for his infant child, under sixteen years of age, when it was reasonable and proper that such treatment should be provided, and that the child died from such neglect :—Held, that the defendant had been guilty of an indictable offence under s. 210 of the Code, which enacts that everyone who as parent, guardian, or head of a family, is under a legal duty to provide necessaries for any child under sixteen, is criminally responsible for omitting without lawful excuse to do so, etc. Remarks upon the Judge's charge as to "authorized" medical aid and upon the admission of evidence of cures believed to have been wrought by Christian Scientists, even as shewing good faith. REX v. LEWIS, 23 Occ. N. 257, 6 O. L. R. 132, 2 O. W. R. 290, 566.

25. **Manslaughter** — PUNISHMENT OF SOLDIER — DEATH CAUSED BY.]—The defendant, a corporal of the 16th regiment, was tried for murder of James White, a private of the regiment, and convicted of manslaughter. It appeared from the evidence given at the trial that White having been placed in confinement while in a state of intoxication, the defendant with two men were ordered by Stevens, a sergeant of the regiment, to have the deceased tied so that he could not make a noise by kicking and shouting. The order was not executed in such a manner as to entirely put an end to the noise, and a second order was given to tie up the deceased so that he could not shout. In carrying out the latter order Stowe caused the deceased to be placed on the floor face downward, with his hands cuffed behind his back; a rope was fastened to his feet, which were drawn up behind his back, and the rope passed over his shoulders and across his mouth and back again to his feet :—Held, in reply to two questions reserved for the court by his Lordship the Chief Justice, who presided at the trial that whether the illegality consisted in the order of the sergeant or in the manner in which it was carried out Stowe might properly be convicted. Also, that the jury were justified in finding that the death of White was caused or accelerated by the way in which he was tied by Stowe or by his directions. QUEEN v. STOWE, 2 N. S. D. 121.

26. **Manslaughter** — VARIOUS POSSIBLE CAUSES OF DEATH — SUFFICIENCY OF EVIDENCE TO AS CRIMINAL OPERATION.]—Though the postmortem examination was insufficient and death might have been occasioned by some undiscovered disease of organs as to which no examination was made, it was held that evidence tending to show that death resulted from the medicines, and abortion committed by the prisoners was sufficient in point of law to submit the case to the jury. REGINA v. GARROW AND CREECH, 1 C. C. C. 246, 5 B. C. R. 61.

27. **Medical Evidence** — REPLY.]—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 REGINA v. JONES, 28 U. C. R 416.

The theory of the defence in an indictment for murder, was that the death was caused by the communication of small pox virus by a medical man who attended the deceased, and one of the witnesses for the defence explained how the contagion could be guarded against. The medical man had not in his examination-in-chief or cross-examiniation 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. REGINA v SPARHAM AND GREAVES, 25 C. P. 143.

28. **Motive** — INSURANCE.]—On a trial for murder, the alleged motive being the obtaining of insurance moneys on policies effected by the prisoner on the life of deceased, evidence of a previous attempt by the prisoner to insure another person for his own benefit cannot be given in evidence against him REGINA v HENDERSHOTT, 26 O. R. 678.

29. **Motive**—INSURANCE.—On a charge of wife murder, the Crown sought to to prove that the prisoner had been with evil design accumulating insurance on his wife's life:—Held, that evidence of various applications for insurance, though in some cases resulting in rejection of the risk, was admissable, all being made practically at the same time and forming part of one transaction which could be properly given in evidence as a whole. REGINA v. HAMMOND, 29 O. R. 211.

30. **Murder** — ABSENCE OF DIRECT EVIDENCE — CORPUS DELICTI — PRESUMPTION OF DEATH — CROWN COUNSEL — RIGHT OF REPLY — COMMENT OF FAILURE OF PRISONER TO TESTIFY — CROWN CASE RESERVED — NEW TRIAL.]—REX v. CHARLES KING (N. W. T.), 1 W. L. R. 348, 576.

31. **Murder** — AMBIGUOUS VERDICT — VENIRE DE NOVO.]—When, on an indictment for murder, the jury returned a verdict in the following words: "Guilty of murder with a recommendation to mercy, as there is no evidence to show malice aforethought and premeditation. —Held, that it was too ambiguous and uncertain to allow the court to pronounce any judgment on it. QUEEN v. HEALEY, 2 Thom. 331.

Remarks as to whether a venire de novo can be granted in a capital case. IB.

32. **Murder** — APPEAL AGAINST VERDICT FOR MISDIRECTION IN CHARGE.]—New trial granted where evidence, which was proper to be considered, for the purpose of considering whether the prisoner's offence should be reduced from murder to manslaughter, was withheld from the jury. REGINA v. BRENNAN, 4 C. C. C. 41, 27 O. R. 659.

33. **Murder**—CIRCUMSTANTIAL EVIDENCE — RESERVED CASE — POWER OF COURT TO SET ASIDE VERDICT.] — H. D., J. C. D. and L. were tried for murder. H. D. and J. C. D. were found guilty and L. acquitted. The following case was reserved as to J. C. D., under Rev. Stats., c. 171, ss. 99 and 100:—

Admitting the evidence to have been legally before the court and to be worthy of credit as the jury have considered it, is there any legal evidence it this case under which the conviction of the said J. C. D. is sustainable in point of law.

J. C. D. was mate, H. D. cook (colored), and L. a seaman of the vessel on board which the murder was committed. The murder was committed at sea and the murdered man was captain of the vessel. There was no evidence that J. C. D. personally committed the murder, and no direct or positive evidence that he counselled or advised it. The evidence against him was wholly circumstantial, and was in brief as follows:—At 4 o'clock in the morning of the murder he was inquiring for H. D., and went forward where H. D. was sleeping. The captain, while lying in his berth in his cabin, between 4 a.m. and 5 a.m., was struck in the face by H. D. with an iron belaying pin. The blows were repeated several times, and H. D. then "got on the captain and held him down." L., (who had previously been on deck, but had gone below, being sent for by H. D.), came on deck wringing his hands and saying "the cook has killed the captain". J. C. D. immediately after this came up from the forward cabin. S., (a boy on board the vessel, and the principal witness for the prosecution), then asked J. C. D. what was the matter

to which he replied that he did not know. J. C. D. then went forward, lit his pipe, laid down on H. D's. clothes chest, smoked a few minutes and then, with tears running down his face, told S. to "go to the cabin and help Harry" (H. D.). S. refused to go, and J. C. D. then gave the same order to L. and M. (of the crew), who also both refused to go. J. C. D. then repeated the same order to L., who then went. H. D. and L. then brought the captain up and threw him overboard. The captain was not dead when brought up, but there was no proof that J. C. D. could see that he was still alive. The captain groaned loudly after being thrown over, and lifted his hands up. J. C. D. was at this time crying. He then told M. to throw the captain's bedclothes and mattress overboard, directing him and L. to put iron in the latter to make it sink. H. D's. hands and sleeves and bosom of his shirt were bloody, and J. C. D. advised him to wash the blood off. H. D. then brought up the captain's small trunk containing the ship's papers and handed some of them to J. C. D. who then said, "we cannot do what we intended to do." (S. on cross-examination said, "I do not think he said 'as you intended', he might have said so"). S. then asked him what he intended to do, when he said, "that he intended to go to the West Indies and sell the cargo of coal; then he intended to go to Mexico and sell the vessel, but they could not do what they intended." J. C. D. then directed S. to burn the captain's letters. He then said that the best thing they could do was to steer to land and sink the vessel. The vessel's course was then directed to land by J. C. D's. orders, and when near the land he directed a hole to be bored in the vessel, near the water line, and her name to be painted out. The whole crew then left the vessel and went ashore. J. C. D. stated to persons whom they met, and also when examined before a magistrate near the place where they landed that they had left the vessel because she was leaky, and that they had lost the captain overboard. He denied any knowledge of the vessel having a hole in her side, or her name being painted out. He also told M. that they must not say that the captain had been killed. It appeared from the cross-examination of some of the witnesses for the Crown, that subsequently, and before his second arrest, J. C. D. had stated that the captain had been murdered by H. D. and that he was the first who made this statement. This statement was in writing, but it was not given in evidence and was not allowed to be referred to at the argument. It appeared that J. C. D. and H. D. had sailed together before, the former as mate and the latter as boatswain, of a colored crew. The captain's clothes were divided among the crew in the presence of J. C. D. but J. C. D. took no part of them. S. said on cross-examination, that J. C. D. seemed to be afraid of H. D.; that he (S.) was afraid of him too; that H. D. followed them up all the time on shore, and when they were in bed, and said that if either J. C. D. or S. peached, he would swear them down. S. said that J. C. D. was kind and humane and seemed to be religious; would not allow swearing. He appeared to have opposed the burning of the ship's papers. His cabin was opposite the captain's and within a few feet of it :—Held, per Young, C. J., Johnston, E. J., Dodd and Desbarres, JJ., Wilkins, J., dissenting, that there was evidence proper to be left to the jury (it was left to them with confessedly proper instructions), and the jury having passed upon it, as they had the constitutional right to do, the court had not the power to set the verdict aside, and the conviction was therefore sustainable in point of law. Per Johnstone, E. J., that the verdict of the jury was a mistaken one, but that the court had not the power to set it aside. Per Wilkins, J., that as the evidence did not exclude every other hypothesis but that of guilt, there was no legal evidence to sustain the conviction, and that the court had the power and the right to quash it. QUEEN v. DOWSEY ET AL., 2 Old. N. S. R. 93.

34. **Murder** — CONSTRUCTIVE OFFENCE — UNLAWFUL PURPOSE — COMMON DESIGN — EVIDENCE — JUDGE'S CHARGE — FINDING OF JURY — VERDICT — MISTRIAL.]—The prisoner and two other men were in lawful custody in a cab, when loaded pistols were thrown in by an unknown person, and all three endeavored to escape by using the pistols. In the struggle which ensued one of the constables in charge of the three men was shot and killed by one of the prisoners. The trial Judge told the jury that there was no evidence of common design up to the moment the pistols were thrown in, yet if at that moment, before the shot was fired that killed the constable, the

three men resolved to escape from lawful custody, each was responsible for the acts of the other. The jury after some consideration asked the Judge to repeat his charge as to the resolution to escape, and he did so in different words. The jury did not agree as to whether the prisoner actually fired the shot which killed the constable, but found the prisoner guilty on what their foreman called the second "count", and their verdict was recorded with their consent as one of "guilty", with a clause added as to their inability to agree as to whether the prisoner fired the shot :—Held, having regard to the evidence and s. 61 (2) of the Criminal Code, that the offence being murder in the actual perpetrator, was murder in the prisoner, even if he were not the atcual perpetrator. 2. That there was nothing in the charge nor in the subsequent instructions to the jury, both of which must be read together, of which the prisoner could properly complain. 3. That the finding of the jury was a proper one, and there was no mistrial. The foreman in speaking of "counts" was referring to the two branches of the case; but the verdict was not recorded and acknowledged. REX v. RICE, 22 Occ. N. 225, 4 O. L. R. 223, 1 O. W. R 399.

35. **Murder** — CONVICTION FOR ASSAULT.]—On an indictment for murder, the jury found the prisoner guilty of an assault only, and that such assault did not conduce to the death of the deceased : —Held, on this finding, that the prisoner could not be convicted of an assault under 1 Rev. Stat. c. 149, s. 20. REGINA v. CREGAN, 1 Han., N. B. R. 36.

36. **Murder** — CORPUS DELICTI — EVIDENCE OF IDENTITY OF REMAINS — FAILURE OF ACCUSED TO TESTIFY — COMMENT BY CROWN COUNSEL ON — CODE S. 227, O. 746.] — 1. Where direct proof of death of a human being has been once established by direct evidence, it would be monstrous doctrine if circumstantial evidence could not be given as to who that dead person was, simply because the murderer had so destroyed the remains, that identification was impossible. 2. Once the fact of death is established circumstantial evidence can then be given to prove the identity of the remains, and also the identity of the person who caused the death. 3. Crown counsel has the right of reply, even though no evidence is called by the accused. 4. Comment by the Crown counsel on the failure of the accused to testify as follows : "I think his counsel took the very best and wisest course in not having him go on the stand, and I think it is wise for himself"; is a contravention of the Canada Evidence Act, and such a comment is a substantial wrong to the prisoner. Prisoner held entitled to a new trial. R. v. KING, 9 C. C. C. 426, 1 W. L R. 348,576.

37. **Murder** — CUMULATIVE EVIDENCE ADMISSIBLE IN REBUTTAL.]—On a charge of murder, cumulative evidence may be given in rebuttal by the Crown to contradict the defence on a collateral fact and the prisoner can call evidence in reply. THE KING v. HIGGINS, 7 C. C. C. 68, 36 N. B. R. 18.

38. **Murder** — EVIDENCE, ADMISSIBILITY OF — STATEMENT OF DECEASED AFTER BEING SHOT — COMPLAINT— CROSS-EXAMINATION OF CROWN WITNESS — PARTICULARS OF COMPLAINT — RES GESTAE — DYING DECLARATION. — 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 afterwards. 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 gestae; (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 gestae, being made after all action on the part of the wrong doer 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, 18 O. R. 502.

39. **Murder** — EVIDENCE OF GUILT — CONTINUED SILENCE OF PRISONER — STORY IN WITNESS BOX — INFERENCE — JUDGE'S CHARGE — NEW TRIAL — EVIDENCE IN REBUTTAL — CUMULATIVE TESTIMONY.—The prisoner, who was tried and convicted of murder, although he had ample time and opportunity to tell all he knew concerning the crime both to the authorities and others, maintained a complete silence respecting it, with the exceptions of some bald assertions of his innocence, until he went upon the witness stand at the trial to give evidence on his own behalf, when he admitted being present at the doing of the deed, but charged upon one G., a young companion, who was with him, and who before and at the trial, had alleged the prisoner's guilt. The Judge in charging the jury, told them that they were entitled to take this continued silence of the prisoner into consideration, and after deciding whether or not such silence proceeded from a consciousness of guilt and a desire to spring a defence upon the Crown, which it might not be able to meet, they might therefrom draw an inference as to his guilt or innocence. He further instructed them that this continued silence of the prisoner was an element that might assist them in determining the amount of credence that ought to be given to the story told by the prisoner in the witness box :—Held, that the charge was correct in both respects; and even if erroneous, as in the opinion of the court no substantial wrong or miscarriage had been occasioned thereby, such error was cured by proviso (f) of s. 746 of the Code. The witness G., in the original case of the Crown, swore that the murder had been committed about three o'clock in the afternoon, and that he and the prisoner were back in the city about five o'clock. The prisoner swore that the crime was not committed until about five o'clock and that the clocks were striking six when he and G. were coming back to the city. The Crown by permission, then called a witness to contradict the prisoner as to the time of G's. return to the city; and the Judge allowed the prisoner's counsel to put in a witness in reply :—Held, that the evidence so put in by the Crown was contradictory; and further, as it was in the discretion of the Judge in what order he would receive evidence, and as the prisoner had had the opportunity of replying, of which he had taken advantage that a new trial on the ground that such evidence was cumulative should be refused. REX v. HIGGINS, 36 N. B. Reps. 18.

40. **Murder** — EVIDENCE — DYING DECLARATION — INDIAN WOMAN — HEARSAY EVIDENCE.—Before the death of an Indian woman, for whose murder the prisoner was being tried, a statement was obtained from her in the following way. A justice of the peace swore an Indian to interpret the statement the woman was about to make; a constable then asked questions through the interpreter, and a doctor wrote down what the interpreter said the woman's answers were. The doctor and the justice of the peace then signed the statement. To some of the questions the woman indicated her answers by nodding her head. At the trial the statement was tendered as a dying declaration, and the doctor, the justice of the peace, and the constable identified the statement; the interpreter deposed that he interpreted truly, but he gave no evidence as to what the woman really did say :—Held, disapproving Regina v. Mitchell, 17 Cox C. C. 503, that the statement was admissible as a dying declaration; also that it had been properly proved. An Indian woman's statement that she thinks she is going to die is a sufficient indication of such a settled hopeless expectation of immediate death as to render the statement admissible as a dying declaration. A dying declaration may be obtained by means of ques-

tions and answers, and if it is reduced to writing it is sufficient if the answers only appear in the writing. REX v. LOUIE, Occ. 23 N. 274, 10 B. C. R. 1.

41. **Murder** — FINDING OF MANSLAUGHTER — JUSTIFIABLE HOMICIDE — OMISSION IN JUDGE'S CHARGE — NEW TRIAL — CODE SEC. 744-746.]—On the trial of accused on an indictment for murder the Judge directed the jury that to justify or excuse the homicide, the prisoner must have had reasonable grounds for apprehending imminent peril to his life, or the lives of his family; and omitted to direct the jury on the other ground of the defence that it was also a justification where the act was committed in the fear of grievous bodily harm being inflicted causing reasonable apprehension in the prisoner's mind that his life was in immediate danger, where, as in this case, the original assault was wholly unprovoked. The rule in civil cases, that where the objection to the charge was not taken at the trial, it is not afterwards open to counsel to raise it on appeal, is not applicable to criminal cases, where a substantial wrong or miscarriage has been occasioned :—Held, that the omission in the charge constituted a substantial wrong or miscarriage entitling accused to a new trial. R. v. THERIAULT, 2 C. C. C. 444, 32 N. B. R. 504.

42. **Murder** — INDICTMENT IN SHORT FORM — WHETHER PRISONER CAN BE CONVICTED OF ASSAULT UNDER.]—Held, by Weldon, Wetmore and King, JJ., (Allen, C. J., and Duff, J., dissenting), that on an indictment for murder in the short form given in Schedule A to cap. 19 of 32 & 33 Vict., a prisoner cannot be convicted of an assault under section 51 of the chapter. Held, also, by all the Judges, that the fact of the prisoners counsel having at the trial contended that he could not be so convicted, and requested the Judge so to direct the jury, did not preclude him from afterwards objecting to the validity of the conviction on this ground. REGINA V. MULHOLLAND, 20 N. B. R. 512.

Charging an assault and with having beaten, wounded and illtreated a person—where no wounding—whether properly convicted of a common assault. IB.

43. **Murder** — JOINT INDICTMENT — PLEA OF GUILTY BY ONE, NO ACQUITTAL OF OTHER — CHANGE OF PLEA.]—The accused and another were jointly indicted for murder. The accused pleaded guilty, and the other defendant not guilty. Sentence was deferred until after the trial of the co-defendant, which resulted in an acquittal. Application was then made on behalf of accused for leave to change the plea of guilty to one of not guilty :—Held, the court has power to permit the accused, at all events where sentence has not been pronounced, to withdraw his plea of guilty; that where the acquittal of the one was absolutely inconsistent with the guilt of the other, it would be entirely opposed to the policy of English and Canadian law to permit the prisoner to be sentenced on his plea of guilty. R. v. HERBERT, 6 C. C. C. 215.

44. **Murder** — JUDGE'S CHARGE — MURDER OR MANSLAUGHTER — BENEFIT OF DOUBT.]—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," he is not supposed to direct the jury to bring in but one of the two verdicts of guilty or not guilty of murder, if in other parts of his 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. Where the Judge considers that no doubt exists, he is not obliged to instruct the jury that the prisoner is entitled to any doubt they may entertain, such a course being more likely to impede than to assist them in the discharge of their duty. REX v. FOUQUET, Q. R. 14 K. B. 87.

45. **Murder** — JURY ATTENDING CHURCH — REMARKS OF CLERGYMAN — MEDICAL EXPERT]— . During the progress of a trial for murder the jury attended church in charge of a constable, and at the close of the service the clergyman directly addressed them remarking on the case of one Millman, who had been executed for murder in Prince Edward Island, and told them that if they had the slightest doubt of the guilt of the prisoners they were trying, they should temper justice with equity. One of the prisoners was convicted:—Held affirming the judgment of the court of Crown Cases Reserved for Nova Scotia, that although the remarks of the clergyman were highly improper, it could not

be said that the jury were influenced by them so as to affect their verdict. A witness on the trial, which was for murder by shooting, called as a medical expert, stated to the Crown prosecutor that there "were indicia in medical science by which it could be said at what distance from the human body the gun was fired." This was objected to, but the witness was not cross-examined as to the grounds of his statement. He then described what he found on examining the body of the murdered man, and stated the maximum and minimum distances at which the shot must have been fired. :—Held, affirming judgment below, Stroud and Fournier, JJ., dissenting, that the opening statement of the witness established his right to speak as a medical expert, and it not having been shown by cross-examination, or by other medical evidence, that his statement was untrue, his evidence was properly admitted. QUEEN v. PREEPER, 15 S. C. R. 401, 9 C. L. T. 18.

46. **Murder** — JUDGE'S CHARGE RESPECTING INFERENCE TO BE DRAWN FROM PRISONER'S SILENCE.]—Where an accused upon a charge of murder gives evidence on his own behalf and in his testimony for the first time claims that the murder was committed by the principal witness for the Crown, the Judge in his charge can direct the jury to draw an inference of innocence or guilt from the prisoner's silence. THE KING v. HIGGINS, 7 C. C. C. 68, 36 N. B. R. 18.

47. **Murder** — MANSLAUGHTER — DEFINITIONS — JUDGE'S CHARGE — FAILURE TO INSTRUCT JURY — FAILURE TO OBJECT TO CHARGE — NEW TRIAL — EVIDENCE — REBUTTAL. —It is the duty of the Judge in a criminal trial with a jury to define to the jury the crime charged and to explain the difference between it and its cognate offences, if any. Failure to so instruct the jury is good cause for granting a new trial, and the fact that counsel for the accused took no exception to the Judge's charge is immaterial. 2. After the cases for the Crown and defence were closed, the Crown called a witness in rebuttal, whose evidence changed by a few minutes the exact time of the crime as stated by the Crown's previous witnesses and which tended to weaken the alibi set up by the accused :—Held, that to allow the evidence was entirely in the discretion of the Judge, and there was no legal prejudice to the accused, as he was allowed an opportunity to cross-examine and meet the evidence. REX v. WONG ON AND WONG GOW, 24 Occ. N. 384, 10 B. C. R. 555.

48. **Murder** — PROSECUTION OF UNLAWFUL PURPOSE — COMMON DESIGN — EVIDENCE — JUDGE'S CHARGE. —4 O. L. R. 223, 5 C. C. C. 509.

49. **Pagan Indian** — EVIL SPIRIT — DELUSION.]—A pagan Indian who believing in an evil spirit in human shape called a Wendigo, shot and killed another Indian under the impression that he was the Wendigo, was held properly convicted of manslaughter. REGINA v. MACHEKEQUONABE, 28 O. R. 309.

50. **Poisoning** — DEATH OF FORMER HUSBAND OF PRISONER.]—Upon the trial of the prisoner for the murder of her husband, who was living with and attended by her in his last illness, it was proved that his death was due to arsenical poisoning. In order to shew that the poisoning was designed and not accidental, the Crown offered evidence to prove that a former husband of the prisoner had been taken suddenly ill after eating food prepared by her, and that the circumstances and symptoms attending his illness and death were similar to those attending the illness and death of the second husband, and that such symptoms were those of arsenical poisoning :—Held, that the evidence was admissible. REGINA v. STERNAMAN, 29 O. R. 33.

51. **Provocation** — NEW TRIAL.]—The prisoner was tried for murder. It was not denied that he had killed the deceased, but it was urged that, by s. 229 of the Criminal Code, the offence was reduced to manslaughter, as having been committed "in the heat of passion caused by sudden provocation." There was evidence that just before the killing the prisoner had called at the house of the deceased to see the latter, who ordered him out and immediately laid hands on him and put him out of the house, when the prisoner drew a revolver and shot deceased. The Judge at the trial directed the jury that the deceased was, at the time he was killed, "doing that which he had a legal right to do," and that there was, therefore, no provocation and no question of fact to be submitted to the

jury to reduce the crime to manslaughter :—Held, misdirection; for whether or not the deceased, at the time he was shot, was doing what he had a legal right to do depended upon whether, if the jury accepted as true the statement of the defendant given in evidence as to the circumstances attending the shooting, the deceased had, before laying hands upon him, ordered him to leave his house, and whether, if he had done so, the prisoner had refused to leave, and whether, if violence was used in putting him out, it was greater than was necessary; and the deceased was clearly not doing what he had a legal right to do if the facts were found in favour of the prisoner's contention on these points. New trial directed, upon an appeal under s. 744 of the Criminal Code. REGINA v. BRENNAN, 27 O. R. 659.

52. **Rejecting Evidence as to Alleged Accessory.**]—Prisoner being indicted for the murder of one H., the principal witness for the Crown stated that the crime was committed on the 1st 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, fifteen 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 inquiry, 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, 21 U. C. R. 330.

53. **Threats.**]—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. REGINA v. JONES, 28 U. C. R. 416.

See also EVIDENCE — NEW TRIAL.

MUTINY.

1. **Revolt** — INCITING, ON HIGH SEAS—Crim. Code 128.]—The prisoner was committed for unlawfully endeavouring to make a revolt on board ship on the high seas. On habeas corpus proceedings being taken, it was held that cap. 73, 41 and 42 Vict. (Imp.) was not applicable as it refers solely to offences committed within a marine league of the coasts of His Majesty's dominions. Nor could the Crown proceed under sec. 128 of the Code until the consent of the Governor-General had been obtained in accordance with sec. 542 of the Code. REX v. HECKMAN, 5 C. C. C. 242.

NECESSARIES.

1. **Interpretation of** — MEDICAL TREATMENT.]—The term "necessaries" in section 210 of the Code includes medical treatment and assistance when it is reasonable and proper that medical treatment and assistance should be provided. REX v. LEWIS, 7 C. C. C. 261, 6 O. L. R. 132, 23 Occ. R. 257.

2. **Medical Attendance and Remedies** — CRIM. CODE SECS. 209 AND 210.]—The necessaries of life within the meaning of secs. 209 and 210 Crim. Code include medical attendance and remedies. It is no lawful excuse that one conscientiously believes it is contrary to the teachings of the Bible and therefore wrong to have recourse to medical attendance in cases of sickness. REX v. BROOKS, 5 C. C. C. 372, 9 B. C. R. 13.

3. **Neglecting to Provide for Family** — WIFE AS WITNESS.]—The evidence of a wife is inadmissible, on the prosecution of her husband for refusal to support her under 32 & 33 Vict. c. 20, s. 25 (D.). REGINA v. BISSELL, 1 O. R. 514.

4. **Neglecting to Provide for Family** — REFUSAL TO HEAR EVIDENCE.]—Under 32 & 33 Vict. c. 20, s. 25 (D.), as amended by 49 Vict. c. 51, s. 1 (D.), defendant was charged by his wife, before a magistrate, with refusing to provide necessary clothing and lodging for herself and children. At the close of the case for the prosecution, defendant was tendered a witness on his own behalf. The magis-

trate refused to hear his evidence, not because he was the defendant, but because he did not wish to hear evidence for the defence; and subsequently, without further evidence, committed him for trial :—Held, that the defendant's evidence should have been taken for the defence; that a magistrate is bound to accept such evidence in cases of this kind and give it such weight as he thinks proper, and that the exercise of his discretion to the contrary is open to review : —Held, also, that the amended section of the Act is intended to enlarge the powers and duties of magistrates in cases of this nature, and that the word "prosecution" therein includes the proceedings before magistrates as well as before a higher court. REGINA v. MEYER, 11 P. R. 477.

5. **Neglecting to Provide for Family** — LAWFUL EXCUSE — AGREEMENT.]—Upon an indictement of the prisoner under s. 210, s.-s. 2 of the Criminal Code, 1892, for omitting without lawful excuse to provide necessaries for his wife, evidence is admissible on behalf of the prisoner of an agreement between him and the person who became his wife, at the time of the marriage, that they were to live at their respective homes and be supported as before the marriage until the prisoner obtained a situation where he could earn sufficient for their maintenance. REGINA v. ROBINSON, 28 O. R. 407.

6. **Neglecting to Provide for Family** — FORMER MARRIAGE — PROOF OF DEATH OF FIRST HUSBAND.]—The defendants on the complaint of his wife, was convicted under s.-s. 2 of s. 210 of the Code, of refusing to provide necessaries for her. The evidence shewed that the parties were married in 1890, but that the complainant had been married to another person in 1886, though she had never lived with him; that in 1888 she had received a letter stating he was dying in the United States, and that was the last she heard of him, save that about a year after her marriage to the defendant she again heard that he was dead. No further proof of the death of the first husband was given :—Held, that there was evidence to go to the jury of the death of the first husband, and that the defendant was properly convicted. REGINA v. HOLMES, 29 O. N. 362.

7. **Neglecting to Provide for Family** — FACTS TO BE PROVED.—An indictment under 32 & 33 Vict. c. 20, s. 25 (D.), alleged that S. was the wife of defendant, and was willing to live with him as such; that it was defendant's duty to provide the necessary food, clothing, and lodging for her sustenance; and that he, on, &c., and from thence hitherto, unlawfully, wilfully and without lawful excuse, did refuse and neglect to provide the same, contrary to the statute, &c. :—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, 42 U. C. R. 242.

8. **Permanent Injury** — EXPERT EVIDENCE NECESSARY TO DECIDE.]—Where a boy under sixteen years of age has lost his toes through frostbite, the Court without expert evidence cannot decide that the injury suffered was of such a nature as to permanently injure his health or to be likely to do so, as required by secs. 209, 210 and 211 of the Code, so as to render an accused criminally responsible for neglecting the duties imposed by such section. REGINA v COVENTRY, 3 C. C. C. 541.

See also HUSBAND AND WIFE — MEDICINE — MURDER AND MANSLAUGHTER.

NEGLIGENCE.

1. **In Operating Street Cars.**—A street railway company under a legal duty to use reasonable precautions to avoid danger to human life in operating its cars on the public highway, can be indicted for a common nuisance where such reasonable precautions are neglected or omitted. REGINA v. TORONTO STREET RAILWAY COMPANY, 4 C. C. C. 4.

See also INDICTMENT — MASTER AND SERVANT — MUNICIPAL CORPORATIONS.

NEW TRIAL.

1. **Acquittal.**—Quære, whether it is proper to grant a new trial, where an individual or a corporation has been once acquitted on an indictment even in cases of misdemeanour. REGINA v. GRAND TRUNK R. W. Co., 15 U. C. R. 121.

2. **Ambiguity of Judge's Charge.**]—Where Judge's charge was ambiguous so that jury was misled into thinking that want of reasonable or probable cause in a prosecution for demanding property with menaces (Crim. Code sec. 403) was a question of law, and not of fact a new trial granted. REGINA v. COLLINS, 1 C. C. C. 48, 33 N. B. R. 429.

3. **Application for by Crown on Acquittal** — WEIGHT OF EVIDENCE.—While section 747 of the Code sanctions an application by an accused, who has been convicted, for a new trial upon the weight of evidence, there is no similar provision in the Code enabling the Crown or prosecutor, to apply for a new trial after an acquittal, either on the weight of evidence, or because the verdict was contrary to the evidence. REX v. PHINNEY, 7 C. C. C. 280, 36 N. S. R. 288.

4. **Application for upon a Conviction Against the Weight of Evidence.**]—Where a new trial is applied for upon the ground that the verdict is against the weight of evidence the question whether the verdict is one that the jury as reasonable men would properly find. REGINA v. BREWSTER, 4 C. C. C. 36, 2 Terr. L. R. 153, 377.

5. **Canada Evidence Act** — COMMENT BY COUNSEL.]—A new trial was ordered where comment was made by counsel as to the failure of the wife of the accused to testify, such comment being in violation of sec. 4 of the Canada Evidence Act. REGINA v. CORBY, 1 C. C. C. 457, 30 N. S. R. 330.

6. **Capital Offence.**]—Where after conviction for a capital offence the proceedings were discovered to have been illegal, there having been no associate Judge sitting in court during the trial, on motion on behalf of the Crown (the prisoner not moving in any way), the indictment and conviction with the prisoner, were brought up on certiorari and habeas corpus, and an order made setting aside all such proceedings, and remanding the prisoner to custody, with a view to a new trial. REGINA v. SULLIVAN, 15 U. C. R. 198.

7. **Circumstantial Evidence** — CROWN CASE RESERVED — NATURE OF — WEIGHT OF EVIDENCE — NEW TRIAL.]—The defendant was tried and convicted on a charge of theft upon evidence shewing that the prosecutor's money had been stolen; that the defendant was employed upon the same ship and slept in the same "square"; that the defendant had asked the prosecutor for a loan of money a day or two before and had been refused; that the defendant was seen with money in his possession on the day the prosecutor's was stolen; but no attempt was made to identify the money seen in the defendant's possession with that stolen, nor was it shewn that the defendant knew where the prosecutor kept his money; the defendant, however, made to a third person a false statement as to the source from which he got the money he had:—Held, Weatherbe, J., dissenting, that there was some evidence to support the conviction. 2. That a question reserved for the court, "Whether the convicting Judge was justified in drawing from the facts stated a presumption sufficiently strong to justify him in adjudging the defendant guilty," was not a proper question to reserve; such a question could only come before the court on a motion for a new trial. 3. Per Graham, E. J., that the case was one in which the court should exercise its power under the Criminal Code, s. 746, to order a new trial. But per Meagher, J., that the remedy by case reserved and that by motion for a new trial were not open to the accused at the same time. REGINA v. MCINTYRE, 31 N. S. Reps. 422. REGINA v. MACCAFFERY 33 N. S. Reps. 232.

8. **Comment of Crown Counsel on Failure to Call Wife of Accused** — CONVICTION QUASHED — NEW TRIAL.]—On the trial of the defendant on a charge of shooting with intent to kill, counsel for the Crown commented upon the fact that the defendant's wife, who had been a witness on the preliminary examination before the magistrate, was not called. On a Crown case reserved:—Held, that the comment in question was not justified by the fact that it was made in reply to an explanation offered by counsel for the

defendant to account for the omission to call the wife, and that the conviction must be set aside :—Held, that the defendant should not be discharged, but that there should be a new trial. REX v. HILL, 36 N. S. Reps. 240.

9. **Comment by Crown Counsel on Failure of Accused to Testify.**]—Comment by the Crown counsel on the failure of the prisoner to testify, as follows : "I think his counsel took the wisest and course in not having him go on the stand, and I think it is wise for himself," is a contravention of the Canada Evidence Act, and amounts to a substantial wrong for which a new trial will be ordered. R. v. KING, 9 C. C. C. 426, 1 W. L. R. 348, 576.

10. **Comment by Judge on Failure of Accused to Testify.**]—The prisoner was indicted for theft, and the Judge in charging the jury remarked, "If he is not guilty it is very easy for him to prove he was not in the locality that day. Of course, he had the opportunity of going on the stand, but at the same time that is not to affect him. He is not bound to go on the stand, and it is not to be taken against him that he did not, but you have a right to draw the inference that if he were innocent, he could show where he was that day. Now has he done that ?" :—Held, that it was a contravention of the Canada Evidence Act, sec. 4, and a new trial should be ordered. R. v. MCGUIRE, 9 C. C. C. 554, 36 N. B. R. 609.

11. **Confession.**—Held, that the withholding from the court confessions made before the coroner, for fear that they would prejudice the prisoner, would render the application for a new trial irregular. REGINA V. FINKLE, 15 C. P. 453.

12. **Confession**] — JUDGE REVERSING RULING AS TO ADMISSIBILITY OF — NECESSITY OF IMPANELLING FRESH JURY. — Where a trial Judge admitted certain alleged confessions in evidence, and then after further consideration reversing his previous ruling, and directed the jury to wholly disregard such evidence, the Judge should have discharged the jury, and had a fresh one impanelled; not having done so the prisoner was entitled to a new trial. The question of the admissibility of such confessions could not be considered by the full court on a motion for a new trial by the prisoner. R. v. SONYER, 2 C. C. C. 501.

13. **Conspiracy.**]—Upon motion for a new trial upon an information for conspiracy tried at nisi prius upon a record from the Queen's bench :—Held, that affidavits made by some of the jurors that the jury were not unanimous, but believed that the verdict of the majoirty was sufficient could not be received as ground for new trial. REGINA V. FELLOWES, 19 U. C. R. 48.

Where several defendants have been convicted, a new trial, if granted, must be to all. IB.

14. **Demand** — MENACES — MISDIRECTION.]—On a trial under an indictment for delivering a letter demanding property with menaces (the Criminal Code, 1892, s. 403), the learned Judge charged the jury "That they may consider the letter as a demand, the delivery of the letter being proved, and that no reasonable cause shown for the demand" :—Held, (Tuck, J., dissenting), a misdirection, and that there should be a new trial. REGINA V. COLLINS, 33 N. B. R. 429.

15. **Grounds for** — WEIGHT OF EVIDENCE — FAILURE TO CHALLENGE JUROR FOR CAUSE — COMMUNICATION BETWEEN JUROR AND PROSECUTOR.—1. An inadvertent failure to challenge a hostile juror for cause is no ground for a new trial. Prisoner's remedy lies in an appeal to the Crown to exercise the prerogative of mercy. 2. Though any communication between a juror and a party to a case is improper, yet where it is unpremeditated and innoxious it is not in itself a sufficient ground for a new trial. 3. The credibility of witnesses and the efficiency of evidence are matters entirely within the scope of inquiry of the jury. When therefore the jury has exercised this discretion and their verdict is based on such evidence as they believed, it cannot be said to be against the weight of evidence. But where there is an absolute failure of evidence to sustain the verdict the trial Judge will grant leave to apply to the court of appeal for a new trial. R. v. HARRIS, 2 C. C. C. 75.

16. **Judge's Comment** — JUROR'S AGREEMENT THAT MAJORITY CARRY — EVIDENCE OF.]—1. A remark by the trial Judge while the jury is being impanelled, to the counsel for accused, "That 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," is not a matter of law for a reserved case, but an irregularity which might entail the annulling of the verdict. In order to do such it must be of such a nature as to unduly prejudice the jury. 2. The trial Judge has a right to give his opinion of the evidence to the jury, and a remark of the Judge in his charge, to the effect, "that it is very strange it should take forty or fifty witnesses to establish the character of the accused," is not a matter of law, but an irregularity which might be a ground to impeach a verdict. 3. The fact that a juror has made remarks tending to disclose a bias against the accused, will not of itself furnish a ground for a new trial. Such should not be ordered unless it be shown that the juror was so prejudiced as to be unable to give the accused a fair and impartial trial. R. v. CARLIN, 6 C. C. C. 365, Q. R. 12 K. B. 483.

17. **Jury.**—CONFLICT OF TESTIMONY—PERVERSE VERDICT — OPINION OF TRIAL JUDGE.]—On a charge of theft a new trial was refused, although the verdict was contrary to the view of the trial Judge, the evidence being conflicting, but the court being of opinion that the verdict of guilty was one which reasonable men could properly find. In deciding the question of reasonableness of the verdict the opinion of the trial Judge is entitled to and ought to receive great weight, but it is not conclusive. REGINA V. BREWSTER, (No. 2), 2 Terr. L. R. 377.

18. **Misdirection Where Evidence Extenuating Homicide is Withdrawn from Jury.**]—New trial granted where certain preliminary questions essential to determining whether there was sufficient provocation to reduce homicide from murder to manslaughter, were not submitted to jury. REGINA V. BRENNAN, 4 C. C. C. 41, 27 O. R. 659.

19. **Motion for New Trial** — LEAVE.]—A motion for a new trial in a criminal cause can be made before the court of appeal only upon leave therefor granted by the court before which the trial has taken place. REX v. FOUQUET, Q. R. 14, K. B. 87.

20. **New Evidence.**]—The court was not authorized to grant a new trial on the discovery of new evidence, or for the misconduct of the jury. REGINA V. OXENTINE, 17 U. C. R. 295.

21. **New Evidence.**]—The court declined to receive affidavits as found for such applications. See Regina v. Crozier, 17 U. C. R. 275; Regina v. Beckwith, 8 C. P. 224; Regina v. Fitzgerald, 2 U. C. R. 546; Regina v. Chubbs, 14 C. P. 32; Regina v. Hamilton, 16 C. P. 340.

22. **New Evidence.**]—The court on the return of the rule refused to receive new affidavits, stating that the deceased had been seen alive after the date of the alleged murder and thus setting up an entirely new case. REGINA V. HAMILTON, 16 C. P. 453.

23. **New Evidence.**]—Under 20 Vict. c. 61, the court was not empowered to grant a new trial in criminal cases on any ground apart from what was done be either the court or the jury at the trial, such as the alleged discovery of new evidence, or a disappointment in obtaining witnesses. REGINA V. GRAY, 1 E. & A. 501.

24. **Nuisance.** —The defendants having been convicted on an indictment for a nuisance which had been removed into the Queen's bench by certiorari, moved for a new trial, which was refused :— Held, that no appeal would lie to this court from the judgment refusing the new trial, and that it could make no difference that the indictment had been removed by certiorari, and tried on the civil side. Regina v. Eli, 13 A. R. 526; Regina v. Laliberte, 1 S. C. R. 117, referred to. REGINA V. CITY OF LONDON, 15 A. R. 414.

Quære, whether in any case of misdemeanour a new trial can not be granted, C. S. U. C., c. 12, 112, 113, 32 & 33 Vict. c. 29, s. 80 (D.). IB.

25. **Power to Grant.** —The court has no power to order a new trial in a criminal case reserved under 14 & 15 Vict. c. 13; but only to decide upon any legal exceptions raised, and whether there was legal evidence to sustain the indictment, taking it in as strong a sense against the defendant as it will bear, and supposing the jury to have given credit to it to its full extent. REGINA V. BABY, 12 U. C. R. 346.

26. **Prisoner's Counsel Taken Sick.**]—One of the prisoner's counsel at the trial, whilst he was addressing the jury at the close of the case, was suddenly seized with a fit and incapacitated from proceeding any further. No adjournment, however, was applied for, for the other, who was

the senior counsel continued the address to the jury on the prisoner's behalf, without raising any objection that he was placed at a disadvantage by reason of his colleague's disability; it did not, moreover, appear that the prisoner had been prejudiced by the absence of the counsel alluded to :—Held, no ground for a new trial. REGINA v. FICK, 16 C. P. 379.

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 non-direction 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. IB.

27. **Refusal of** — WHERE THERE HAS BEEN AN ACQUITTAL.]—Where an accused has been acquitted on a trial, the Court of appeal in its discretion will refuse to order a new trial upon a case reserved at the instance of the prosecutor, even if there was a misdirection in favor of the accused, there being other evidence irrespective of the misdirection upon which the jury might have convicted. REX v. JAMES, 7 C. C. C. 196, 6 O. L. R. 37.

28. **Remarks** — AUTHORITIES—REVIEW OF.]—Remarks and review of authorities, as to granting new trials upon the evidence; Regina v. Chubbs, 14 C. P. 32; Regina v. McElroy, 15 C. P. 116; Regina v. Fick, 16 C. P. 379; Regina v. Hamilton, 16 C. P. 340; Regina v. Seddons, 16 C. P. 389; Regina v. Slavin, 17 C. P. 205.

29. **Reserved Points of Law.**]—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. REGINA v. HAMBLY, 16 U. C. R. 617.

30. **Review of Evidence.**]—On motion for a new trial by a prisoner convicted of murder on circumstantial evidence only, Morrison, J., who tried the case, expressed himself as not dissatisfied with the verdict, and Draper, C. J., having reviewed the evidence at length, came to the conclusion that there was enough to go to the jury, and that their finding upon it could not be declared wrong. Hagarty, J., held that under the statute a Judge is called upon only to say whether there was any evidence to go to the jury, not to express any opinion as to their verdict founded upon it. A new trial was therefore refused; and the court declined to grant leave to appeal. REGINA v. GREENWOOD, 23 U. C. R. 255.

31. **Right of Crown.**]—A new trial will not be granted to the Crown in a criminal cause; neither has the Crown an appeal to the Supreme Court of Canada from a judgment quashing a conviction. REGINA v. TOWER, 20 N. B. R. 168.

32. **Stated Case** — NO LEAVE TO APPLY FOR A NEW TRIAL — EVIDENCE.]—There being in point of law evidence which the Judge sitting as a jury must have weighed and considered, and no leave to apply for a new trial having been granted by the trial Judge on a case stated by him, the court of appeal has no jurisdiction to interfere. REX v. CLARK, 5 C. C. C. 235, 3 O. L. R. 176.

See also APPEAL — EVIDENCE — CROWN CASE RESERVED — MISDIRECTION.

NOLLE PROSEQUI.

1. **Costs** — PRIVATE PROSECUTOR — ATTORNEY-GENERAL — NOLLE PROSEQUI — EFFECT.]—Where a nolle prosequi has been entered by the Attorney-General, upon an indictment in the name of the King at the instance of a private prosecutor, and the accused is thereupon discharged, judgment is, within the meaning of Art. 833 of the Criminal Code, given for the defendant, and he is entitled to recover costs from the private prosecutor. REX v. BLACKLEY, Q. R. 13, K. B. 472.

2. **Power of Clerk of Crown to Enter** — SECOND INDICTMENT FOR SAME OFFENCE — SEVERAL COUNTS — DISTINCT INDICTMENTS.]—The prisoner was convicted of receiving stolen goods, on an indictment containing two counts, one for stealing the goods and the other for receiving them, knowing them to have been stolen. The prisoner had, on a former day, in the same circuit, been indicted for stealing the same goods as those which he was charged with stealing by the first count of the present indictment. A jury was impanelled and the trial of the prisoner

begun, but in consequence of it appearing from the testimony that the prisoner could not be convicted for larceny, the clerk of the Crown, who was conducting the prosecution by direction of the Attorney-General, entered a nolle prosequi, and then sent another bill from the grand jury, containing a count for receiving, the indictment on which the conviction took place, and on the trial he consented that the prisoner should be acquitted of the charge accordingly. Held, on a case reserved, 1st, that the clerk of the Crown has authority to enter a nolle prosequi. 2nd, That a nolle prosequi being entered, the prisoner could be again indicted for the same offence. 3rd, Even admitting that the clerk of the Crown has no authority to enter a nolle prosequi, the conviction upon the count for receiving would be good, each count being a separate indictment in itself. REGINA v. THORNTON, 2 P. & B., N. B. R. 140.

NON SUPPORT.

See HUSBAND AND WIFE — NECESSARIES.

NUISANCE.

1. **Common Nuisance** — INDICTMENT AGAINST CORPORATION WILL LIE FOR.]—An indictment for a common nuisance will lie against an electric railway company operating its cars on the public highway, under a legal duty to use reasonable precautions to avoid danger to human life, where such reasonable precautions are omitted or neglected. REGINA v. TORONTO RAILWAY COMPANY, 4 C. C. C. 4.

2. **Erection of Fence.**]—An information to restrain a nuisance caused by the erection of a fence on a public highway, alleged that "the defendants or some or one of them had put up such a fence" :—Held bad, on demurrer, as being too uncertain an allegation as to who had committed the act complained of. ATTORNEY-GENERAL v. BOULTON, 20 Gr. 402.

3. **Indictment of Electric Railway Company** — ENDANGERING LIVES OF PUBLIC — NEGLIGENT OPERATION OF CARS — WANT OF PROPER APPLIANCES — FENDERS — CARS RUNNING REVERSELY.]—Case reserved by chairman of the general sessions of the peace for the county of York upon an indictment and conviction of defendants for a nuisance, consisting in the negligent operation of the cars, without proper appliances, etc., so as to endanger the lives and safety of His Majesty's subjects, etc. It was alleged that defendants were authorized to operate a street railway on certain streets in the city of Toronto, and in doing so were under a legal duty to take reasonable care and precaution to avoid endangering the lives and safety of the public, but without reasonable excuse neglected to take such precautions and did thereby endanger the lives and safety of the public and thereby committed a common nuisance. It was shewn that at one end of a double tracked street that there was used what is called a "Y," and the cars were backed on a single track for about a quarter of a mile. There was no fender, headlight, nor gong used while backing this distance, which made it very confusing to persons crossing the street to tell which way the cars were going. Elizabeth Ward, in attempting to cross the street in the dark, was knocked down and killed by a car backing up this track :—Held, defendants were properly convicted, it being a common nuisanec either at common law or under s. 191 and the first part of s. 192 of the Code. REX v. TORONTO R. W. CO., 4 O. W. R. 277, 5 O. W. R. 621, 10 O. L. R. 26.

4. **Municipal Corporation** — INDICTMENT — PRELIMINARY INQUIRY — PROHIBITION — CHANCERY DIVISION.]—1. A prosecution of a municipal corporation for a nuisance in not keeping a public street in repair can only be by indictment, under s. 641, s.-s. 2 of the Criminal Code. 2. A preliminary inquiry cannot be taken before a magistrate for the purposes of s.-s. 2. 3. The Judges of the Chancery Division of the High Court of Justice for Ontario have jurisdiction at common law and by virtue of 28 V. c. 18, s. 2 (D.), in prohibition in criminal cases, notwithstanding that no rules have been made under s. 533 (b) of the Code, and notwithstanding the provisions of s. 754, Motion for a rule nisi to set aside order of Ferguson, J., prohibiting a police magistrate from proceeding, refused. IN RE REGINA v. CITY OF LONDON, 21 Occ. N. 71, 32 O. R. 326.

5. **Precept to Abate Nuisance** — RULE NISI GRANTED FOR A PRECEPT TO THE SHERIFF OF THE COUNTY OF HALIFAX, TO ABATE A NUISANCE.]—An indictment had been preferred against the defendant in a previous term, at the instance of the city of Halifax, for erecting a building on a public street, and a judgment obtained,requiring him to abate the nuisance. It now appeared by affidavits that the nuisance had not been abated. Rule was made absolute. QUEEN v. HENDRY, James N. S. R. 105.

6. **Street Railway** — REVERSING CARS WITHOUT SIGNALS OR FENDERS — CODE SEC. 191-192.]—When the evidence showed that the defendants as a general practice were accustomed, at the end of one particular route or line, in order to allow a car to turn for the return trip, to allow it to run backwards for a distance, over a section of track which was used by cars going in the opposite direction, that in so doing no fender, light or gong was used on the rear end of the car; that the practice was dangerous to the public safety :—Held, that the corporation was properly convicted on an indictment charging it with committing a common nuisance in permitting such a practice. R. v. TORONTO RAILWAY CO., 10 C. C. C. 106.

OATH.

1. **Chinaman Witness** — "CHICKEN OATH" OR "PAPER OATH".]—On a trial for murder the preferable form of oath to administer to a Chinese witness from the province of Canton, who is not a Christian, is the "chicken oath" and not the "paper oath". REX v. AH WOOEY, 8 C. C. C. 25, 9 B. C. R. 569.

2. **Chinese Witness** — "PAPER OATH" — BINDING.]—When a man without objection takes the oath in the form ordinarily administered to persons of his race or belief, he is under a legal obligation to speak the truth. The "paper oath" administered to a Chinese witness is binding on a Chinese witness. REX v. LAI PING, 8 C. C. C. 467, 11 B. C. R. 102.

3. **Failure to take Oaths of Allegiance and Office** — JUDGE DE FACTO.]—All persons appointed to judicial office being required before assuming authority and acting in their judicial offices to take the oaths of office and allegiance, failure to do so on the part of the deputy recorder of the city of Montreal was held to invalidate a conviction made by him. The fact that the objection was taken at the trial prevented him from being a Judge de facto. EX PARTE ELIZA MAINVILLE, 1 C. C. C. 528.

4. **Failure to take Oaths of Office and Allegiance** — POINT NOT RAISED BY DEFENDANT AT TRIAL — JUDGE DE FACTO.]—Where the presiding Judge has failed to take the oaths of office and allegiance and his qualification and power to act not being challenged by the defendant at the trial, it was held that he was a Judge de facto, and the judgment which he rendered was valid and binding. EX PARTE THOMAS CURRY, 1 C. C. C. 532.

See also PERJURY.

OBSCENE MATTER.

1. **Distributing and Circulating** — CODE SEC. 179.]—Printed matter to be obscene within the meaning of sec. 179 of the Crim. Code must be offensive to modesty or decency, or expressive or suggestive of unchaste or lustful ideas, or being impure, indecent or lewd, and tend to corrupt public morals. The test is whether the tendency is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of the sort may fall. The word 'knowingly' in the section makes it incumbent on the prosecution to give some evidence of knowledge of the contents of the printed matter being possessed by the defendant. R. v. BEAVER, 9 C. C. C. 415, 9 O. L. R. 418, 5 O. W. R. 102.

2. **Distributing Obscene Printed Matter** — CRIMINAL CODE, s. 179 (a) — KNOWLEDGE OF CONTENTS — MEANING OF "OBSCENE".]—Case reserved under s. 743 of the Criminal Code. Prisoner was indicted under s. 179 (a) for distributing obscene printed matter, "To the Public; The Evil Exposed; The Plot against Prince Michael Revealed." The Judge found the offence proved as charged, and reserved the following points for the opinion of the court of appeal : 1. Is the printed

matter complained of obscene within the meaning of s. 179 (a) of the Criminal Code? 2. Did the prisoner, without lawful excuse, distribute such obscene printed matter?—Held, affirming the conviction, that the word "obscene" as used in s. 179 (a) means the doing of any indecent act in a public place; s. 179 (b), publicly exhibiting any disgusting object; and s. 180 (c), transmitting by post any letter or circular concerning schemes devised or intended to deceive the public, or for the purpose of obtaining money under false pretences. This part of the Code strikes at conduct involving sexual immorality and indecency, and it is in that sense that the word is used in s. 179. The whole of the printed matter, disgusting as it is, is set forth in United States v. Mabs, 51 Fed. Rep., 41. REX v. BEAVER, 5 O. W. R. 102, 9 O. L. R. 418.

OBSTRUCTING PEACE OFFICER.

See PEACE OFFICER.

OBSTRUCTING DISTRESS.

1. **Obstructing School Trustee in Making Distress** — CRIMINAL CODE, s. 144 (2) — MAILING OF NOTICE OF ASSESSMENT AND TAX NOTICE, AND POSTING OF TAX-ROLL, — SUFFICIENCY OF EVIDENCE OF — ENTRIES ON TAX AND ASSESSMENT ROLLS INITIALLED BY OFFICIAL TRUSTEE — "PROCEEDING" — "CANADA EVIDENCE ACT, 1893," s. 2.]—Held, that on the trial of an accused on a charge of having unlawfully resisted and wilfully obstructed an official trustee of a school district in making a lawful distress and seizure, the production of the tax and assessment rolls of such school district with entries thereon of the dates of mailing of the notice of assessment, and of the tax notice to the accused, and of the posting of such tax roll, initialled with what purports to be the initials of the official trustee of such school district, is evidence of the mailing of such notices and the posting of such tax roll. Held, that such prosecution was a "proceeding" within the meaning of s. 2 of "The Canada Evidence Act, 1893." THE KING v. RAPAY, 5 Terr. L. R. 367.

2. **Onus on Crown to Prove Legality of Distress** — CRIMINAL CODE, s. 144, (2).]—Section 144 (2) of the Criminal Code enacts that everyone is guilty of an offence.... who resists or wilfully obstructs any person....in making any lawful distress:—Held, that it devolves on the prosecution under this section to prove the existence of all the ingredients which go to make up the offence one of which is the legality of the distress, as for example, in this case, that there was rent in arrear. It was necessary therefore for the Crown to shew that rent was due and in arrear. REX v. HARRON, 24 Occ. N. 10, 6 O. L. R. 668, 2 O. W. R. 903.

OBSTRUCTING DIVINE SERVICE.

1. **Clergyman a Trespasser** — NO NECESSITY OF ALLEGATION OF LAWFUL POSSESSION IN INDICTMENT — CODE SEC. 171-611.]—Accused was indicted under Code sec. 171 for having unlawfully obstructed divine service. Objection was taken that the indictment did not allege that the clergyman in question was the priest in lawful charge of the church:—Held, that such allegation was unnecessary. Where the indictment followed the wording of sec. 171 and lays a charge in conformity with its provisions. "Unlawfully" in sec. 171 means without legal authority or justification. To support a prosecution under sec. 171 it must be shown that the clergyman at the time of the offence was either the lawful incumbent of the church, or had been holding service with the permission of the lawful authorites of the church. REX v. WASYL KAPIJ, 9 C. C. C. 186, 15 Man. L. R. 110, 1 W. L. R. 130.

2. **Indictment** — PROOF OF LAWFUL AUTHORITY — OWNERSHIP OF CHURCH BUILDING.]—1. An indictment, under s. 171 of the Criminal Code, for unlawfully obstructing or preventing a clergyman or minister, by threats or force, in or from celebrating divine service or otherwise officiating in any church, chapel, etc., is sufficient without allegation that the clergyman or minister obstructed was, at the time of the offence, in lawful charge of the church, chapel, etc. 2. To support a prosecution under that section, however, it must be proved at the trial that the clergyman or minister obstructed was,

at the time of the alleged offence, either the lawful incumbent of the church or was holding service with the permission of the lawful authorities of the church. 3. A church building erected by a congregation of some religious body remains the property of those who adhere to that body, although a majority of the congregation afterwards decides to join another or religious body, and assumes to appoint a clergyman or priest to hold services in the church, and those who are opposed to such appointment may lawfully prevent or obstruct the person so appointed from officiating in the church. REX v. WASYL KAPIJ, 15 Man. L. R. 110, 1 W. L. R. 130.

OFFENSIVE TRADE.

Public Health Act — PRIVATE SANITARIUM.]—The offensive trades enumerated in the Public Health Act (Ont.) 1897, c. 248, s. 72, which are prohibited without the consent of the municipal council of the locality are not to be interpreted in such a way as to give an extended meaning to the words of the Act "or such as may become offensive" as would embrace the sort of work carried on at a private sanitarium for consumptives. REGINA v. PLAYTER, 4 C. C. C. 338, 1 O. L. R. 360.

See also PUBLIC HEALTH.

ONTARIO MEDICAL ACT.

R. S. O. 1897, c. 1765-51 — DOOR PLATE WITH WORD 'DOCTOR'.]—It is not sufficient on a prosecution under sec. 50 and 51 R. S. O. 1897, ch. 176, to show that the defendant made use of a sign containing the word 'Doctor' on the door of his place. REX v. FOSTER, 8 C. C. C. 281.

OVERSEER OF POOR.

Not Accounting — INDICTMENT.]—An overseer of the poor of the parish is liable under the Acts of Assembly, 26 Geo. III., sc. 28 and 43, and 33 Geo. III., c. 6, to an indictment for not accounting at the first general sessions of the peace in the year for moneys received by him for the support of the poor during th preceeding year. It is not necessary that the indictment should be against all the overseers, nor that it should allege that they all neglected to account, if it charge the defendant specifically with the receipt of money for which he did not account. REGINA v. MATTHEW, 2 Kerr, N. B. R. 543.

OWNERSHIP.

Evidence of — DEPOSITIONS OF WITNESS AT PRELIMINARY INQUIRY.]—Held, Rouleau, J., dissenting, upon a Crown case reserved after a conviction for theft, that the production of the steer's hide with the prosecutor's brand and ear marks 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, were sufficient to justify the trial Judge in finding that the steer in question was the property of the prosecutor. (Sec. 63 & 64 V., c. 46, s. 707 A., and I Edw. VII., c. 42, s. 707 A) :—Held, per curiam, that evidence that a witness at the preliminary inquiry was a corporal in the N. W. M. Police, that he had been sworn in as a member of Strathcona's Horse, that the had left the post at which he had been stationed to join the latter force, and that, in the opinion of the deponent, if he had left the latter force he would have returned to such post, which fact would therefore 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 the deposition of such witness taken at the preliminary inquiry; and that the question was one to be decided by the trial Judge. REGINA v. FORSYTHE, 4 Terr. L. R. 398.

See also FALSE PRETENCES — THEFT.

PARENT AND CHILD.

See INFANTS — MURDER AND MANSLAUGHTER — NECESSARIES.

PARLIAMENT.

See CONSTITUTIONAL LAW — STATUTES.

PARTNERSHIP.

1. **Statute Compelling Registration.**]—The Partnership Act of British Columbia, R. S. B. C., 1897, c. 150, requires registration of all partnerships for trading, manufacturing or mining purposes under penalties set out in the Act :—Held, that it does not apply to real estate agents. PAISLEY v. NELMES, 9 C. C. C. 413.

PAWNBROKER.

1. **Infraction of By-Law** — APPEAL — PROCEDURE.]—Where a pawnbroker was convicted of carrying on business without a license under a by-law passed by the city of Montreal, it was held that there was no appeal from the recorder's court in which the conviction was made to the court of Queen's bench on its Crown side, for Article 503 of the city's charter which makes Part LVIII. of the Code applicable to all prosecutions before the recorder's court "as regards the mode of procedure in such prosecutions", does not embrace the right of appeal which is a substantive right and not a matter of procedure. SUPERIOR v. CITY OF MONTREAL, 3 C. C. C. 379, Q. R. 9, Q. B. 138.

2. **Sale of Article with Agreement for Re-Purchase not a Pawn or Pledge.**]—The purchase of property under an agreement that the vendor can re-purchase the property back at a higher price is not such a transaction as to bring the purchaser within the operation of the Ontario Pawnbroker's Act, 1897, and to render him liable for carrying on the trade of a pawnbroker without a license. REGINA v. MUNSON, 4 C. C. C. 351.

PEACE OFFICER.

1. **Constable** — NEGLIGENT IN DUTIES — LIABILITY OF MUNICIPAL CORPORATION —Where the English common law obtains, police officers in the exercise of their public duties, are not to be regarded as agents or servants of the corporation for whose acts or negligence it is impliedly liable, but as state officers with such powers and duties as the state confers on them; and the maxim respondeat superior does not apply. MCCLEAVE v. CITY OF MONCTON, 6 C. C. C. 219, 32 S. C. R. 106.

2. **Constable** — TRESPASS — CIVIL ACTION — QUESTION OF BONA FIDES.]—The question of whether the defendant was acting bona fide in the discharge of his duty as a constable in searching a private house, as being a house of public entertainment, for liquor, was a question for the jury. Honest belief is always a question for the jury. BELL v. LOTT, 9 C. C. C. 345, 9 O. L. R. 114.

3. **Executing Bad Warrant** — CODE SEC. 21.]—Where a warrant is bad on its face as following an invalid conviction, a peace officer who executes the same is not liable to a criminal prosecution as being protected by Code sec. 21. He is also (in Ontario) protected from civil liability by secs. 1, 2, 13, 14 R. S. O., 1897, c. 88. A conviction awarding one fine against three persons jointly for separate acts is bad. A municipal corporation cannot pass a valid resolution to pay the costs of putting an invalid conviction and warrant in force, as it is ultra vires of a corporation to award funds for an illegal purpose. GAUL v. TOWNSHIP OF ELLICE, 6 C. C. C. 15, 3 O. L. R. 438.

4. **Executing Invalid Search Warrant** — WARRANT SIGNED BY JUSTICE ACTING FOR POLICE MAGISTRATE.]—A search warrant signed by a justice acting in the illness or absence or at the request of a police magistrate should include in its designation of the justice such fact, otherwise the warrant is invalid. A description of the justice as "J. P." is insufficient; and where he is erroneously described as a police magistrate the warrant is void. The law is careful to protect the liberty of the subject, and if a peace officer or any other person invades a house or home without authority he is a trespasser and the occupant is justified in using such degree of force as is necessary to either eject him or prevent him from carrying out what he may claim to be a privilege, but which he has not the proper authority to exercise. R. v. LYONS, 2 C. C. C. 218.

5. **Fees**—JUDGE CERTIFYING.]—A Judge presiding at a court of Oyer and Terminer has no power to make an order for the payment of a constable for attending the court, or securing the attendance of witnesses in a criminal trial. See Act of Assembly, 35 Vict., c. 12. MULLIGAN v. RAINSFORD, 2 Han., N. B. R. 1.

6. **Obstructing a Peace Officer** — Crim. Code Secs. 144 and 783.]—Crim. Code sec. 144 is not controlled by sections 783 and 784 Crim. Code, although the offence is the same (excepting that the word "assaulted" contained in section 783 is absent in sec. 144) the punishment mentioned in sec. 788 differs materially from that mentioned in sec. 144. An offence cannot be charged under one enactment complete in itself, and a different punishment inflicted by virtue of another and somewhat different enactment. Rex v. Jack, (No. 2), 5 C. C. C. 304, 9 B. C. R. 19.

7. **Obstructing Officer** — Seizure of Chattel — Conditional Sale.]—The retaking of possession of a chattel by the vendors thereof under the provisions of a conditional sale agreement, is not a seizure within the meaning of the Criminal Code, s. 144, s.-s. 2 (b), so as to subject the purchaser of the chattel, who in good faith disputes the right to retake it, to the penalty prescribed in that sub-section. Rex v. Shand, 24 Occ. N. 125, 7 O. L. R. 190, 3 O. W. R. 293.

8. **Obstruction of Officer of Law** — Bailiff — Executing Writ of Replevin — County Court — Absence of Jurisdiction.]—Section 204 of the Criminal Courts Act, R. S. M., c. 33, does not authorize the issue of a writ of replevin out of the county court of any county court division except that in which the goods to be replieved are situate. For the construction of the provision in that section as to the court out of which the writ is to issue, it is proper to look at the prior enactments of which that section is a revision; and in that light the words "otherwise ordered" should be held to apply only to an order changing the place of trial and not to give power to order the issue of the writ out of the court for any county court division other than that in which the goods to be replieved are situate. An order of a county court Judge for the issue of a writ of replevin out of such other county court, and the writ issued thereunder, are wholly ultra vires and void, and afford no protection to the officer attempting to execute the writ; and the owner of the goods described in the writ cannot be convicted under s. 144, of the Criminal Code, 1892, for unlawfully obstructing or resisting the officer in the execution of his duty, because he by force prevented the bailiff from taking the goods under the writ. Morse v. James, Willes 122, followed. Parsons v. Lloyd, 2 W. Bl. 845, and Collett v. Foster, 2 H. & N. 360, distinguished. Rex v. Finlay, 21 Occ. N. 419, 13 Man. L. R. 383.

9. **Resisting Bailiff** — Distress for Rent — Necessity for Proof of Rent in Arrear — Lawful Distress — Rescue before Impounding.]—Rex v. Harron, 2 O. W. R. 903.

10. **Resisting Distress** — School Taxes — Evidence — Notices — Canada Evidence Act — "Proceedings".]—On the trial of an accused on a charge of having unlawfully resisted and wilfully obstructed an official trustee of a school district in making a lawful distress and seizure, the production of the tax and assessment rolls of such school district, with entries thereon of the dates of the mailing of notice of assessment, and of the tax notice to the accused, and of the posting of such tax roll, initialled with what purports to be the initials of the official trustee of such school district, is evidence of the mailing of such notices, and of the posting of such tax roll. Such prosecution is a "proceeding" within the meaning of s. 2 of the Canada Evidence Act, 1893. Rex v. Rapay, 5 Terr. L. R. 367.

11. **Resisting Constable** — Form of Execution.]—En execution issued by a justice of the peace is sufficient, if it substantially follows the form K in the schedule to the Rev. Stat., c. 137; and any person resisting a constable in executing it is liable to indictment. Regina v. McDonald, 4 All. N. B. R. 440.

12. **Resisting in Execution of Duty** — Procedure before Magistrate.]—A magistrate having the power of two justices can only try the offence of resisting a peace officer in the execution of his duty by following the procedure of Part LV. respecting summary trials, and he cannot proceed summarily under the summary convictions clauses of Part LVIII. of the Code. Rex v. Carmichael, 7 C. C. C. 167.

13. **Resisting Officer**—No Distinction between Officer de facto or de jure in Respect to Offence of.]—The acts of officers de facto are as valid and effectual when they concern the public or the rights of third persons as though they

were officers de jure, and an assault upon a constable, acting under color of appointment, while in the discharge of his duty is not to be differentiated with respect to penal consequences from an assault upon such an officer, whose title to the office he professes to fill is indisputable. THE QUEEN V. JAMES GIBSON, 3 C. C. C. 451, 29 N. S. R. 4.

14. **Resistance to** — PROCESS OF INFERIOR COURT.]—A defendant cannot be convicted for obstructing a peace officer in the execution of his duty or resisting him in the lawful execution of process, where such peace officer is attempting to execute the process of an inferior court beyond its territorial jurisdiction. THE KING V. FINLAY, 4 C. C. C. 539, 13 Man. L. R. 383, 21 Occ. N. 419.

15. **Right to Search Suspected Persons.**] —A peace officer has the right to search a person suspected on reasonable grounds of having stolen a post letter; and the mere fact of not finding the article on the person of the suspect, and the subsequent release, does not render the officer liable in damages for false arrest, where he acted in good faith and on reasonable grounds. MAYER V. VAUGHAN, 6 C. C. C. 68, Q. R. 11, K. B. 340.

16. **Unauthorized Tort of** — MUNICIPAL CORPORATION.]—In an action for damages against the city of Quebec for insulting and injurious language addressed to the plaintiff by a member of the city police, the city denied the responsibility. It was held that municipal corporations in Quebec are not responsible for acts of policemen named by them, if they have not authorized or adopted such acts. TREMBLAY V. CITY OF QUEBEC, 7 C. C. C. 343, Q. R. 23, S. C. 266.

PEDDLING.

See HAWKING AND PEDDLING.

PENALTY.

1. **Conviction** — CANADA TEMPERANCE ACT.]—The word "penalty" while generally applied to pecuniary punishment in its primary meaning, includes punishment by imprisonment as well as punishment by fine, and where penalty was ninety days' imprisonment, statute authorizing three months' imprisonment, conviction held bad, as it may possibly be for more than three calendar months. Amendment refused and conviction quashed. REGINA V. GAVIN, 1 C. C. C. 59, 30 N. S. R. 162.

2. **Mandamus** — REMISSION OF PENALTY — COSTS.]—A rule for a mandamus was granted to compel a justice to issue an execution for costs in a case wherein the defendant had been convicted and fined under the Fisheries Act for illegal fishing. The Minister of Marine remitted both the fine and costs :—Held, per Tuck, C. J., Hanington and McLeod, JJ., that the minister had power to remit the fine but not the costs, and a mandamus would lie to compel the justice to issue execution for the recovery of the same. Held, per Barker and Gregory, JJ., that the fine having been remitted the remission of the penalty left the prosecutor without any remedy for recovery of his costs. Held, per Landry, that the penalty included both fine and costs. EX PARTE GILBERT, 10 C. C. C. 38.

3. **Penalty** — MISAPPLICATION OF, IN CONVICTION.]—Conviction under a bylaw framed under the transient traders' clauses of the R. S. O., 1897, c. 223, s. 583 (30-33) held to be objectionable where the penalty was directed to be applied on taxes to become due. REGINA V. ROCHE, 4 C. C. C. 64, 32 O. R. 20.

See also CONVICTION — CERTIORARI — INTOXICATING LIQUORS — LIQUOR LICENSE.

PERJURY.

1. **Administernig Oath by Deputy** — ACTING AT REQUEST OF CLERK OF THE PEACE.]—The prisoner had been called as a witness in a trial, and the usual oath administered by the county court clerk of the county of Dufferin, acting at the request of the clerk of the peace, in his place during the sittings of the general sessions which were proceeding concurrently with the county court sittings :—Held, that the oath was properly administered to and taken by the prisoner,

being taken in open court in the presence of the Judge; it is immaterial by whom the words stating the nature of the obligation were uttered. R. v. COLEMAN, 2 C. C. C. 529, 30 O. R. 93.

2. **Affidavit in Pending Civil Cause** — SEVERAL CHARGES — DUTY TO CONSIDER AFFIDAVIT AS A WHOLE — CHARGE NOT IN INFORMATION — CONSENT — LITERALLY TRUE STATEMENT — CROWN CASE RESERVED — FORM OF.]—The defendant was convicted in a county Judge's criminal court on several charges of perjury, alleged to have been committed in connection with an affidavit sworn to in a cause pending in the Supreme Court. One of the charges was not contained in the information in the magistrate's court, but was preferred by the Crown prosecutor, before the Judge of the county court, without the latter in any way having expressed his consent to the preferring of the charge as required by the Code, s. 773. Another charge was that defendant, falsely swore that a sum of money was not received by him, whereas it was received by the firm of which the defendant was a member. There was no allegation that the defendant, knowing that the money had been received, corruptly swore, etc., and the statement as sworn to appeared to have been literally true :—Held, that both convictions were bad, and must be set aside :—Held, also, that the different allegations being contained in the one affidavit, the Judge was wrong in considering each charge separately, without reference to the other allegations in the affidavit, and that he was bound to weigh the statements as a whole in arriving at a conclusion as to the guilt or innocence of the prisoner :—Held, also, that it was not competent for the Judge to submit a question as to whether there was legal evidence to sustain the conviction, and send up the evidence for review, but that he must state the effect of the evidence to support a certain charge and reserve the question as to its sufficiency in point of law :—Semble, that the charge of perjury should not have been brought during the pendency of the civil action in the Supreme Court. REX v. COHN, 36 N. S. Reps. 240.

3. **Attempting to Procure False Affidavit of Bastardy** — LETTER — VENUE.]—Attempting to bargain with or procure a woman falsely to make the affidavit provided for by C. S. U. C., c. 77, s. 6, that A. is the father of her illegitimate child, is an indictable offence. The attempt proved consisted of a letter written by defendant, dated at Bradford, in the county of Simcoe, purporting, but not proved, to bear the Bradford post mark, and addressed to the woman at Toronto, where she received it :—Held, that the case could be tried at York. Semble, per Draper, C. J., if the postmark had been proved, and the letter thus shewn to have passed out of defendant's hands in Simcoe, intended for the woman, the offence would have been complete in that county, and the indictment only triable there. Per Hagarty, J., the defendant in that case would still have caused the letter to be received in York, and might be tried there. Quære, whether, if the woman had committed the offence it should have been charged as a misdemeanour only, or as the statutory offence of perjury REGINA v. CLEMENT, 26 U. C. R. 297.

4. **Attempt to Incite** — BAIL — RECOGNIZANCE — JURISDICTION OF JUSTICE OF THE PEACE — CRIMINAL CODE.]—A defendant charged with offering money to a person to swear that A., B., or C. gave him a certain sum of money to vote for a candidate at an election, was admitted to bail and the recognizances taken by one justice of the peace :—Held, that the offences was not an attempt to commit the crime of subornation of perjury, but something less, being an incitement to give false evidence or particular evidence regardless of its truth or falsehood, and was a misdemeanour at common law, and that s. 601 of the Code did not apply. The common law jurisdiction as to a crime is still operative, notwithstanding the Code, and even in cases provided for by the Code, unless there is such repugnancy to the latter law. REX v. COLE, 22 Occ. N. 132, 3 O. L. R. 389, 1 O. W. R. 117.

5. **Authority to Administer Oath** — PERSONATION.]—A 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 sub-division. 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., c, 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 Crim. Code, 1892, prisoner had been properly convicted of perjury. REGINA V. CHAMBERLAIN, 10 Man. L. R. 261.

6. **Civil Proceeding Pending.**]—The practice of indicating parties or witnesses for alleged perjury in a civil suit, while proceedings are still pending, disapproved of. CHADD V. MEAGHER, 24 C. P. 54.

7. **Committal of Witness by Judge.**]—A Judge after ordering the committal of a witness to be held, and prosecuted for perjury under R. S. C., 1886, c. 154, s. 4, does not become functus officio thereby, but may admit the prisoner to bail. EX PARTE RUTHVEN, 6 B. C. R. 115, 2 C. C. C. 39.

8. **Corroborative Evidence** — LEAVE TO APPEAL.]—The fact that a magistrate rejects testimony, tendered as corroborative on a charge of perjury, does not of itself warrant the granting of a leave to appeal, even if the court of appeal may think the magistrate was wrong in rejecting such evidence. REX V. BURNS, 4 C. C. C. 323, 1 O. L. R. 336.

9. **Evidence of Clerk and Stenographer** — PROOF OF PROCEEDINGS IN WHICH OFFENCE COMMITTED — RECORD BOOK — IMPERFECT PROOF — NEW TRIAL — SUBSTANTIAL WRONG OR MISCARRIAGE.]—Crown case reserved by the chairman of the general sessions of the peace of the county of Brant. The prisoner was convicted for perjury. The only evidence was that of the clerk of assize, who swore that the prisoner was called as a witness at a certain trial; and that as clerk of assize he had sworn the prisoner on said trial, and he produced his record book which he kept as clerk of assize, in which he had entered as a witness sworn on said trial the name of the prisoner, whom he identified as a witness who had been sworn by him; and that of the court stenographer as to the evidence the prisoner had given at the said trial :—Held, the law had simplified the proof in such cases under s. 691 of the Criminal Code, viz., "A certificate containing the substance and effect only of the indictment and trial for any offence, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court whereat the indictment was tried, would be sufficient proof of the crime for which the prisoner was tried. This was absent and the conviction was not according to law, since the crime was not legally proved. The saving clause (s. 746 of the Code that the conviction ought not to be set aside as no wrong or miscarriage had been done in the mistake which was invoked by the Crown, did not apply and the conviction was reversed and a new trial granted. REX V. DRUMMOND, 6 O. W. R. 211, 10 O. L. R. 546.

10. **Evidence of Special Facts** — ADMISSIBILITY OF.]—D. in answering to faits et articles on the contestation of a saisie arret, or attachment, stated among other things "1st, that he, D., owed nothing for 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. REGINA, 15 S. C. R. 358.

11. **Extradition** — Code Sec. 148.]—The Extradition Act by sec. 3 (R. S. C., 1886) is made applicable to any subsequent extradition arrangement entered into with a foreign state without the necessity of an order in council. Perjury is an extradition offence by the convention of 1889. Perjury may be committed as an extraditable offence by false swearing of an affidavit in an action for maintenance in a foreign country, without showing that such an affidavit of verification is required or permitted in Canada. Re Collins, 10 C. C. C. 71.

12. **False Declaration** — Canada Evidence Act.]—Sec. 26 of the Canada Evidence Act providing that a justice of the peace may receive the solemn declaration of any person voluntarily making the same authorizes the making of such a declaration, and sec. 147 of the Code is intended to deal with such declaration when made falsely. Regina v. Skelton, 4 C. C. C. 467, 18 C. L. T. 205.

13. **Fire Loss** — Production of Policy.]—C. S. U. C., c. 52, s. 73, empowers any justice of the peace to examine on oath any person who comes before him to give evidence touching loss by fire, in which a mutual insurance company is interested, and to administer to him the requisite oath. Upon an indictment for perjury assigned upon an affidavit made in compliance with one of the conditions of the policy :—Held, that the policy must be produced, although the defendant's affidavit referred to the policy in such a way that its existence might be fairly inferred. Regina v. Gagan, 17 C. P. 530.

14. **Form of Indictment.**]—An indictment for perjury charged that it was committed on the trial of an indictment against A. B., at the court of quarter sessions, for the county of B., on the 11th of June, 1867, on a charge of larceny :—Held, sufficient. Regina v. Macdonald, 17 C. P. 635.

15. **Indictment** — Averment of Authority.]—Where it appears on the face of the indictment 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. Regina v. Callaghan, 19 U. C. R. 364.

16. **Indictment** — Private Prosecutor.]—Upon the trial of an indictment for perjury, the private prosecutor has no right to appear and be heard without the consent of the Crown. Rex v. Gilmore, 7 C. C. C. 219, 6 O. L. R. 286, 23 Occ. N. 298.

17. **Joint Affidavit.**]—A joint affidavit made by the defendant and one D., stated ...."Each for himself maketh oath and saith that, &c., 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. Regina v. Atkinson, 17 C. P. 295.

18. **Judicial Proceeding** — De Facto Tribunal — Jurisdiction.]—An information under R. S. Q., Art. 5551, for trespass upon lands in the county of Huntingdon, in the district of Beauharnois, was laid, heard, and decided before the recorder of Valleyfield, an ex officio justice of the peace within the whole district, but who did not reside in the county where the offence was charged to have been committed, and was, therefore, without jurisdiction to hear the case, as R. S. Q., Art. 5561, provides that such offences shall be cognizable only by a justice or justices resident within the county where the offence has been committed :—Held, affirming the judgment in Q. R. 11, K. B. 477, that the hearing of said charge by the recorder, acting as a justice of the peace having power to hear it, was a judicial proceeding within the meaning of s. 145 of the Criminal Code, and that the appellant was rightly convicted for perjury committed by him upon such hearing, notwithstanding that the recorder had no jurisdiction over the subject matter of the complaint. Drew v. The King, 23 Occ. N. 148, 33 S. C. R. 228.

19. **Jurat** — Place not Mentioned — Proof of Taking Oath.]—To sustain a conviction for perjury in an affidavit, it is not necessary that the jurat should contain the place at which the affidavit is sworn, for the perjury is committed by the taking of the oath, and the jurat so far as that is concerned, is not material. Regina v. Atkinson, 17 C. P. 295.

There was no statement in the affidavit as to where it had been sworn, either in the jurat or elsewhere, except the marginal venue, "Canada, county of Gray, to wit :" but the contents shewed that it related to lands in that county, 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 post-office, by the agent of the Crown lands there, by whom it was forwarded to the commissioner of Crown lands; and that subsequently a patent issued to the party on whose behalf the affidavit had been made :—Held, evidence from which the jury might infer that the affidavit was sworn in the county of Grey. Ib.

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. Ib.

20. **Justices Hearing Charge Without Jurisdiction.**]—The prisoner being indicted for perjury in giving evidence upon a charge of felony against one E. G., it appeared that the felony was committed in the county of Middlesex, if at all. The justices before whom the examination took place entertained the charge and examined the witnesses within the city of London. 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 the city limits :—Held, that the conviction was illegal. Regina v. Row, 14 C. P. 307.

Held, also, that the Imperial statute, 28 Geo. III., c. 49, s. 1, is local in its character and not in force in this province.

21. **Magistrate's Jurisdiction.**]—32 & 33 Vict., c. 23, s. 8 (D.), applies to all cases of perjury, not merely to "Perjuries in Insurance Cases," which is the heading under which ss. 4 to 12 are placed in the Act. Regina v. Currie, 31 U. C. R. 582.

Held, therefore, that a magistrate in the county of Halton had jurisdiction to take an information, and to apprehend and to bind over a person charged with perjury committed in the county of Wellin ton. Ib.

Held, also, that a recognizance to appear for trial on such a charge at the sessions was wrong, as that court has no jurisdiction in perjury, but a certiorari to remove it was refused, as the time for the appearance of the party had gone by. Ib.

22. **Magistrate Sitting Without Jurisdiction** — Code Sec. 145.]—Accused was charged with having committed a trespass in violation of a provincial statute of Quebec, and the Act restricts the hearing of such cases to a magistrate residing in the county where the offence arose. The sitting justice herein, was not a resident of the county where the offence arose, but had ex-officio power of two magistrates over the whole district. The accused was convicted of perjury for false swearing before the magistrate in the said case :—Held, on a reserved case, that though admitted the magistrate was technically disqualified, assuming the verdict of the jury on the criminal trial correct as to the facts, the conviction for perjury was valid; it is sufficient if the offence is committed before any person or tribunal whom the witness believed at the time had power to administer the oath and prosecute the enquiry. Rex v. Drew, 6 C. C. C. 247, 33 S. C. R. 228.

23. **Municipal Corporations** — Investigation by County Judge — R. S. O., ch. 184, Sec. 477 — Necessity for Specific Charges — Scope of Inquiry — Prohibition — When Writ of Prohibition will Lie — Taking Evidence in Foreign Country — Evidence.]—The corporation of the city of Toronto passed a resolution whereby, after reciting that one of their officers had been guilty of misconduct in relation to his duties as inspector of materials furnished and work done by contractors in certain specified respects, and amongst others, in permitting a certain contractor to furnish inferior material to the corporation, and in receiving from such contractor bribes, and wrongfully conveying to him information to facilitate him in securing contracts; they referred it to the county Judge "to investigate and inquire into several matters and things therein referred to, and every matter and thing connected therewith, and with the relations which may have existed, or do exist, between the said W. L. (the officer in question) and any contractor

having, or having had contracts with the city of T., in order that the truth or falsity of the alleged charges of malfeasance, breach of trust, gross negligence, and other misconduct made against the said W. L. may be ascertained." :—Held, that under R. S. O. (1887), ch. 184, sec. 477, the corporation had power to pass the said resolution, specifically referring, as it did, to the officer, and the county Judge had power to make the necessary enquiries, and for that purpose to summon witnesses, etc., and in doing so, to proceed with enquiries against other individuals, besides the contractor, so far and so far only, as it might be necessary to the enquiry against such officer; but the Judge was not authorized to branch off into matters between the contractor and the corporation, in which such officer was in no manner concerned ; and on the authority of Re Squier, 46 U. C. R. 474, the contractor was entitled to a writ of prohibition to prevent such investigation as to any future proceedings, he having appeared and taken part, could not now complain of them. The corporation, under authority of the same Act, also referred it to the said judge by three resolutions to enquire generally into the relations between the corporation, its officials and contractors, tending to undue influence in favor of contractors, and as to whether contractors or other persons wrongfully obtained money from the corporation by fraudulent means, and as to the whole system of tendering, awarding, fulfilling and inspecting contracts. Held, that these resolutions were altogether of too general a character to authorize the Judge to proceed with any enquiry in reference to the said contractor in the subjects referred to, and that he was in like manner entitled to a writ of prohibition to prevent such enquiry. The statute does not mean, or contemplate, that the corporation shall authorize in such general and undefined terms an investigation and inquiry into corporation affairs which implicate individuals generally without naming the person or persons implicated, and without much greater particularity in specifying the nature of the misconduct to be investigated. Held that in holding an investigation under the statute, the Judge was acting in a judicial capacity and not as a mere investigator or commissioner. Semble, that if the county Judge in the course of such investigations proceeded to the United States to take evidence, any oath administered by him in the United States would have no legal significance, and any false statement made by a person sworn before him under such circumstances would not have attached to it the consequences of perjury. In re Godson and the City of Toronto, 18 O. R. 275.

24. **Municipal Election.**]—An election under the Municipal Act is commenced when the returning officer receives the nomination of the candidates, and it is not necessary to constitute an election that a poll should be demanded. Where, therefore, in an indictment for perjury, defendant was alleged to have sworn that no notice of the disqualification of a candidate for township councillor had been given previous to or at the time of holding the election, the perjury assigned being that such notice had been given previous to the election; and the notice appeared to have been given on the nomination of the candidate objected to : —Held, that the assignment was not proved. Regina v. Cowan, 24 U. C. R. 606.

25. **Negative Averment** — Evidence.]—D., in answering to faits et articles on the contestation of a saisie arret, 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 count which were pleaded to, a judgment given on a general verdict of guilty on that count would be sustained. Downie v. Regina, 15 S. C. R. 358.

26. **New Trial** — Appeal — Description of Offence — Confession — Improper Admission of Criminating Answers before Judicial Tribunal.]—A count alleging perjury before a coroner —omitting any reference to the coroner's jury—was held sufficient in view of section 611, s.-s. 3 and 4, and s. 723 of the Criminal Code. A new trial was granted on the ground of the reception of evidence an admission made by the accused in answer to questions put to him as a witness on the inquest before the coroner's jury, it being held that s. 5 of the Canada Evidence Act, 1893, compelled the witness to answer, and protected him against his answers being used in evidence against him in any criminal proceeding thereafter instituted against him other than a prosecution for perjury in giving such evidence, and this without the necessity for the claim of privilege on the part of the witness. The Queen v. Thompson, 2 Terr. L. R. 383.

27. **Oath Administered in Foreign Country.**]—Semble, that if the county Judge in the course of an investigation under R. S. O. 1887, c. 184, s. 477, proceeded to the United States to take evidence, any oath administered by him in the United States would have no legal significance, and any false statement made by a person sworn before him under such circumstances would not have attached to it the consequences of perjury. In re Godson and City of Toronto, 16 O. R. 275.

28. **Personation and Perjury** — Acquittal on Former Charge — Trial for Perjury — Identity of Accused — "Autrefois Acquit" — Res Judicata — Nemo bis vexari — Criminal Code.]—Rex v. Quinn, 6 O. W. R. 1011, 11 O. L. R. 242.

29. **Power to Administer Oath.**]—A commissioner authorized to take affidavits in the Supreme Court has no power to take an affidavit of the service of an order in case of review of the judgment of a justice of the peace, and the party swearing falsely in such an affidavit cannot be indicted for perjury. Regina v. McIntosh, 1 Han. N. B. R. 372.

Semble, perjury may be assigned where the oath has been administered on the Common Prayer Book of the Church of England. See McAdam v. Weaver, 2 Kerr's, N. B. R. 176

30. **Proceedings Before Information** — Form of Indictment.]—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. Regina v. Mason, 29 U. C. R. 431.

The indictment was defective for not showing 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 showing that the person complained against was present, or that a summons issued, and that the magistrate was authorized to proceed ex parte. Ib.

31. **Proof of Former Trial** — Matter of Record.]—On the trial of an indictment for perjury, the proper legal proof of the previous trial wherein the perjury is alleged to have been committed, is by production of the record of the former trial, that is to say, the sworn or exemplified copy of the indictment and verdict and judgment thereon, or by some authoritative document which the law has declared to be a sufficient substitute therefor. R. v. Drummond, 10 C. C. C. 341, 10 O. L. R. 546.

32. **Scienter** — Civil Suit Pending.]—One of the elements of the crime of perjury is that the accused knowing the fact, swore to what he knew to be false; and such is an essential allegation to the charge. Where the alleged perjury was committed in an affidavit, the whole context of the affidavit must be looked at, and the statements weighed as a whole in arriving at the conclusion of the guilt or innocence of the accused. Where a civil suit is pending involving the very question on which perjury is charged, the court has determined to postpone the criminal trial until the civil suit is determined. R. v. Cohen, 6 C. C. C. 386.

33. **Substantial Wrong** — Rejection of Evidence in Civil Action — New Trial.]—The full court holding that there was evidence in the depositions of the

accused at the civil trial which was explanatory of the criminal charge and which might have influenced the jury, there was a 'substantial wrong' and the prisoner was entitled to a new trial. Rex v. Coote, 8 C. C. C. 199, 10 B. C. R. 285.

34. **Summary Trial** — Jurisdiction.]—A magistrate has jurisdiction to adjudicate summarily upon a charge of perjury where the accused consents. Rex v. Burns, 4 C. C. C. 330, 1 O. L. R. 336.

35. **Trial Without Jurisdiction.**]—The clerk of a division court, acting under 13 & 14 Vict., c. 53, s. 102, issued an interpleader summons of his own authority, without the bailiff's request; both parties attended before a barrister appointed by the Judge of the court, who was ill, and an order was made. The Judge afterwards ordered a new trial, which took place. The defendant was convicted for perjury committed upon that occasion :—Held, that both parties having appeared, the proceedings in the first instance could not be considered void for want of a previous application by the bailiff; but :—Held, also, that it was not competent for the Judge to order such new trial, the first order being made final by the statute; and that the conviction was therefore illegal. Regina v. Doty, 13 U. C. R. 398.

36. **Variance Between Indictment and Information.**]—The court will not quash the indictment because there is a variance in the specific charge of perjury contained in the information and that in the indictment provided the indictment sets forth the substantial charge contained in the information. Regina v. Broad, 14 C. P. 168.

37. **Voter's Oath.**]—The swearing falsely by a voter, at an election for aldermen or common councilmen for the city of Toronto, that he is the person described in the list of voters entitled to vote, is not perjury by any express enactment, and a plea of justification to a declaration on the case for imputing perjury to plaintiff on the ground of such false swearing, is bad on demurrer. Thomas v. Platt, 1 U. C. R. 217.

See also Extradition — Indictment.

PERMANENT INJURY.

See Necessaries.

PERSON.

1. **Interpretation of a Relation to Corporation.**]—The word "person" does not include corporations upon summary proceedings under the Code being heard before a justice of the peace. Ex Parte Woodstock Electric Light Co., 4 C. C. C. 107, 34 N. B. R. 460.

PERSONATION.

1. **Personation of Voter** — "Referendum" — Ontario Liquor Act, 1902 — Sentence — Police Magistrate — Judicial Discretion — Right of Appeal — Mandamus — Status of Applicant — Informant.]—Re Denison, Rex v. Case, 6 O. L. R. 104, 2 O. W. R. 152, 512.

2. **Procuring Another to Vote Knowing he has no Right to Vote.**]—The man who brings forward another and induces him to vote at a polling place where he has no right to vote, the former knowing that the latter has no such right, is guilty of a corrupt practice within the meaning of section 168 of the Ontario Election Act, R. S. O., 1897, ch. 9. Rex v. Coulter, 7 C. C. C. 288, 6 O. L. R. 114, 23 Occ. N. 280.

3. **Procuring Personation** — Liquor Act, 1902 — Ontario Election Act — Conviction.]—Rex v. Coulter, 6 O. L. R. 114, 2 O. W. R. 523.

4. **Quantum of Bail on Charges of.**]—Upon an application for bail in a committal under the Dominion Elections Act, 1900, substantial bail will be required where there is not only danger of the accused fleeing to avoid punishment, but that bail may be intentionally forfeited to avoid scandal. Regina v. Stewart, 4 C. C. C. 131.

See also Elections.

PILOTAGE ACT.

1. **By-Law Creating Offence Under.**]—The Pilotage Act and 57-58 Vict. ch. 48 enables the Montreal Harbor Commissioners to pass a by-law making it an offence for a pilot who is selected for service with one transatlantic line to handle more than thirty vessels of that line during the season, or to take service on any vessel of another line. PERRAULT v. MONTREAL HARBOR COMMISSIONERS 4 C. C. C. 501, Q. R. 17 S. C. 501.

PIRACY.

1. **Piracy** — REVOLT — 41, 42 VICT. (Imp.), c. 73 — CRIM. CODE 128.]—The prisoner was committed for unlawfully endeavouring to make a revolt on board ship on the high seas. It was held that c. 73, 41 and 42 Vict. (Imp.) was not applicable as it refers solely to offences committed within a marine league of the coasts of His Majesty's dominions. Nor could the Crown proceed under sec. 128 of the Code until the consent of the Governor General had been obtained in accordance with sec. 542 of the Code. REX v. HECKMAN, 5 C. C. C. 242.

PLEA.

1. **Change of** — POWER OF COURT TO ALLOW.]—Where an accused has pleaded guilty to a charge of murder, and sentence has been deferred, the court in its discretion has power to permit a withdrawal of the plea before sentence has been pronounced. Where on a joint indictment one prisoner pleads guilty and the other not guilty and the latter is tried and acquitted, the court where the sentence has not been pronounced, will permit a change of plea, where the acquittal of the one is wholly inconsistent with the guilt of the other. R. v. HERBERT, 6 C. C. C. 215.

2. **Of Guilty** — RE-OPENING AFTER CONVICTION ENTERED.]—Where a conviction has been entered on a plea of guilty the court has no power to re-open the hearing on the merits, which would be tantamount to allowing the defendant to withdraw his plea of guilty; and the case will not be reviewed on appeal for the purpose of reviewing the punishment imposed, unless the magistrate exercised his discretion improperly and oppressively. R. v. BOWMAN, 6 B. C. R. 271, 2 C. C. C. 89.

3. **Special Plea** — CRIMINAL LIBEL — JUSTIFICATION.]—Special plea should contain only the statement in a summary form of the material facts on which the party pleading relies, and not the evidence by which it is proposed to prove such facts nor any statement purely of comment or argument. The existence, date, and effect of document relied on may be stated, but the document itself cannot be embodied in the plea. REGINA v. WM. A. GRENIER, 1 C. C. C. 55.

See also INDICTMENT — PRISONER — SPEEDY TRIAL — TRIAL.

POISONING.

Poisoning.]—On a charge of murder of second husband by arsenical poisoning, evidence showing prisoner's former husband taken suddenly ill after eating food prepared by prisoner and symptoms attending his illness and death those of arsenical poisoning held admissible. REGINA v. STERNAMAN, 1 C. C. C. 1, 29 O. R. 33.

POLICE COURT.

Police Court.]—Whether the police court is a court of justice within 32 & 33 Vict., c. 21, s. 18, or not is a question of law which may be reserved by the Judge at the trial, under C. S. U. C. c. 112, s. 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, 22 C. P. 46.

POLICE MAGISTRATE.

1. **Commission for County** — JURISDICTION IN CITY UNDER PROVINCIAL STATUTE (N. B.) — PART LV. CODE.]—A police magistrate for a county with certain jurisdiction within a city therein

is not a police magistrate of the city within the meaning of Part LV. of the Code, and has no jurisdiction to hold a summary trial thereunder. REX v. BENNER, 8 C. C. C. 398, 35 N. B. R. 632.

2. **Ex Officio Jurisdiction as Justice of the Peace to try Cases Arising in County.**]—A police magistrate, ex officio possessing the power of two justices of the peace can try a case arising in the county sitting anywhere in the county, so far as the place of trial is concerned, the only restriction being in respect to a case originating in a city or town where there is a police magistrate, except in case of the illness, absence or at the request of the police magistrate. REGINA v. MCLEAN, 3 C. C. C. 323.

3. **Jurisdiction** — CRIMINAL CODE, 785.]—QUEEN v. CARTERS, 1 Can. C. C. 41.

See also CERTIORARI — CONVICTION — JUSTICE OF THE PEACE — JURISDICTION.

POLYGAMY.

1. **Indian Married to Two Indian Women by Tribal Rites.**]—An Indian practising polygamy with two Indian women to whom he had been married in accordance with the tribal rites, comes within the provisions of sub-section (a) of sec. 278 of the Code. REGINA v. BEAR'S SHIN BONE, 3 C. C. C. 329, 4 Terr. L. R. 173.

2. **Indian Marriage.**]—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 s. 278 of the Criminal Code. REGINA v. "BEAR'S SHIN BONE", 4 Terr. L. R. 173.

POSSESSION.

1. **Of Counterfeit Money** — EVIDENCE OF GUILTY KNOWLEDGE.] — Upon an dictment charging possession of a counterfeit coin, an objection to the Crown introducing evidence of the prisoner having genuine trade dollars on his person when arrested, and which he had tried to pass off as worth one dollar when their real value was sixty cents, was sustained on the ground that guilty knowledge would have to be established by proving that the trade dollars were counterfeit. REGINA v. BEAHAM, 4 C. C. C. 63, Q. R. 8 Q. B. 448.

2. **Possessing Distilling Apparatus.**]—The offence of possessing distilling apparatus without having made a return thereof, contrary to the Inland Revenue Act, 31 Vict., c. 8, s. 130, is a "crime". RE LUCAS AND MCGLASHAN, 29 U. C. R. 81.

POST LETTER.

1. **Letter Handed to Postman.**]—Within the meaning of 52 V. c. 20, s. 2 (D.), a letter handed to a postman, in the post-office itself, is a letter "confiee a la poste" (post letter), and where the postman steals such letter he may be convicted under s. 326 (c) of the Criminal Code. REX v. TREPANIER, Q. R. 10, K. B. 222.

2. **Stealing Letter** — ADMISSIBILITY OF CONFESSION OF CARRIER — CODE SEC. 326.]—Prisoner was a letter-carrier assigned to a certain district in Toronto city. Decoy letters were written by the inspector, enclosed and addressed in envelopes to persons in the district of the accused. The letters were placed in the wicket in the ordinary course of the routine of sorting and were received by accused in ordinary course of his regular duties :—Held, that they were post letters within the meaning of the statute. In order that a confession of a prisoner may be admissible it must be proved affirmatively to the satisfaction of the trial Judge, that it was made freely and voluntarily and not in response to any threat or suggestion of advantage to be inferred either directly or indirectly used by a person in a position of authority in connection with the prosecution. R. v. RYAN, 9 C. C. C. 347, 9 O. L. R. 137.

See also THEFT.

PRACTICE AND PROCEDURE.

1. **Adjournment of Hearing** — PRESENCE OF ACCUSED.]—Where the hearing of an information for assault was ad-

journed in the presence of accused to a certain date and the accused was not present on that date, the magistrates were justified in proceeding in his absence. DANAULT v. ROBIDA, 8 C. C. C. 501, Q. R. 10 S. C. 199.

2. **Appeal from Summary Conviction.**]—Sec. 881 of the Code providing that an appeal from a summary conviction to the court of general sessions in Ontario shall be tried without a jury is intra vires of the Dominion, being a matter of procedure, and not a matter of the constitution of a criminal court. REGINA v. MALLORY, 4 C. C. C. 116.

3. **Appeal** — LEAVE — ACQUITTAL BY MAGISTRATE — APPLICATION BY PROSECUTOR — PERJURY — CORROBORATION.]—A motion by the prosecutor, under s. 744 of the Criminal Code (as amended by 63 & 64 V., c. 46), for leave to appeal from the decision of a police magistrate acquitting the defendant of perjury, and refusing to reserve for the opinion of the court of appeal the question whether there was corroborative evidence of the prosecutor in any material particular, and whether the magistrate exercised a legal discretion under s. 791 of the Code in declining to adjudicate summarilly upon the case, and had jurisdiction to try the defendant, who was a client of the Crown court attorney, in the absence of counsel for the Crown, was refused, under circumstances and for reasons appearing in the report. REX v. BURNS, 21 Occ. N. 202, 1 O. L. R. 336.

4. **Appeal** — LEAVE — RESERVED CASE — GROUNDS FOR GRANTING — REMARKS OF JUDGE — PREJUDICE — JURORS — EVIDENCE.]—Held, affirming the judgment in Q. R. 12 K. B. 368, that a verdict cannot be impeached in consequence of an observation made by the Judge presiding at the trial, unless such observation was calculated to influence the jury against the defendant; and, consequently, the fact that the Judge remarked to the defendant's counsel while the jury was being sworn, "if you continue to challenge every man who reads the newspapers, we shall have the most ignorant jurors selected for the trial of this cause," is not a proper ground for granting leave to appeal, such remark having no tendency to influence the jury against the defendant, and being without importance. 2. An observation by the Judge presiding at the trial of a criminal case, in his charge to the jury, to the effect that "about 40 or 50 witnesses had been examined for the purpose of establishing the defendant's good character, and that it was very strange that it should take 40 or 50 witnesses to establish it," is not an irregularity which can constitute a ground for granting leave to appeal, the presiding Judge having the right to express his opinion of the evidence, which, however, may or may not be accepted by the jury, who decide finally as to the innocence or guilt of the accused. 3. An appeal from the verdict to the court of King's bench sitting in appeal lies only upon questions of law arising either on the trial or an any of the proceedings, preliminary, subsequent, or incidental thereto, or arising out of the direction of the Judge. It follows that in cases such as the following, the right of appeal does not exist, viz., where it it alleged that one of the jurors was prejudiced against the prisoner; where it is alleged that the verdict was the result of an improper arrangement entered into between the jurors, these being questions of fact; or where it appears that no application was made to the trial Judge to reserve the question for the opinion of the court of appeal. REX v. CARLIN, Q. R. 12 K. B. 483.

5. **Appeal** — LEAVE — FORUM.]—Since the passing of 63 & 64 V., c. 46, s. 3, amending s. 744 of the Criminal Code, the accused may apply directly to the court of appeal to obtain leave to appeal. REX v. TREPANIER, Q. R. 10 K. B. 222.

6. **Appeal** — LEAVE — PRACTICE — OATH FOR CHINAMEN — FORM OF — PERJURY — CONFESSION — THREAT OR INDUCEMENT — VOLUNTARY CONFESSION — JUDGE'S RULING — REVIEW.]—The prisoner, a Chinaman, had been convicted for perjury :—Held, that leave to appeal to the court of Criminal Appeal should not be lightly granted, and the representative of the Crown should be served with a notice of motion setting out the grounds of appeal. Quære, whether the ruling of a Judge as to the admissibility of a confession is open to review by the court of Criminal Appeal :—Held, on the facts, that before making his confession the prisoner was duly cautioned, and that the confession was admissible in evidence, although, on an occasion previous to his making it, an inducement

may have been held out to him. When a witness without objection takes an oath in the form ordinarily administered to persons of his race or belief, he is then under a legal obligation to speak the truth and cannot be heard to say that he was not sworn. Perjury may be assigned in respect of statements given in evidence by a Chinaman, who was not a Christian, where the oath was administered to him by the burning of paper and an admonition to him "that he was to tell the truth, the whole truth, and nothing but the truth, or his soul would burn up as the paper had been burned." REX v. LAI PING, 25 Occ. N. 22, 11 B. C. R. 102.

7. **Application for Leave to Appeal** — NOTICE TO ATTORNEY-GENERAL.]—The Attorney-General should be served with a notice of motion for leave to appeal to the court of appeal after a reserved case has been refused. REX v. LAI PING, 8 C. C. C. 467, 11 B. C. R. 102.

8. **Arrest of Prisoner in Foreign Country Without Warrant** — DETENTION AND RETURN TO ONTARIO TO ANSWER CHARGE OF THEFT — HABEAS CORPUS — CUSTODY UNDER ORAL REMANDS — JUSTICE OF THE PEACE — JURISDICTION — POLICE MAGISTRATE. REX v. WALTON, 6 O. W. R. 905, 11 O. L. R. 94.

9. **Arrest Under Warrant** — ESCAPE — RIGHT TO RE-ARREST UNDER SAME WARRANT.]—The prisoner had been arrested at Amherst by one of the police of that town, under a warrant. After his arrest he escaped, and left the town for some weeks. When he returned he was re-arrested under the same warrant : —Held, that, at the most, the escape in this case was negligence on the part of the officer, and that he did not contemplate a voluntary abandonment of his prisoner, but negligently trusted to the latter's promise to surrender himself under the warrant; therefore, he might be re-arrested. REX v. O'HEARN, 21 Occ. N. 355.

10. **Bail** — ESTREAT — MOTION TO VACATE — DELAY — ADJOURNMENT OF HEARING WITHOUT NOTICE TO SURETIES — CONFLICTING AFFIDAVITS.]—REX v. MAY, 5 O. W. R. 68.

11. **Bail** — ESTREAT — CERTIFICATE OF NON-APPEARANCE — INFORMALITY — CRIMINAL CODE — FORMS — MOTION TO VACATE ESTREAT — DELAY — ACTION TAKEN ON CERTIFICATE.]—REX v. MAY, 5 O. W. R. 67.

12. **Bail** — ESTREAT — SITTINGS OF COURT — NON-APPEARANCE — NOTICE.]— In a recognizance of bail the expression "the next sittings of a court of competent criminal jurisdiction," means the next sittings fixed by the Lieutenant-Governor in council in pursuance of the N. W. T. Act, s. 55. The fact that a special sitting was held in the interval pursuant to the N. W. T. Amendment Act, 1891, s. 12, s.-s. 2, for the trial of a designated prisoner confined in gaol and awaiting trial, did not affect the obligation of the accused to appear at the next sittings fixed by the Lieutenant-Governor. No notice to the bail of intention to estreat or to produce the accused is necessary. Regina v. Schram, 2 U. C. R. 91, and Re Talbot's Bail, 23 O. R. 65, followed. IN RE MCARTHUR'S BAIL (No. 1), 2 Terr. L. R. 413.

13. **Bail** — RIGHT TO — DISCRETION OF JUDGE.]—All Supreme Courts of criminal jurisdiction, or one of the their Judges, and also, in the Province of Quebec, a Judge of the Superior Court, have authority to admit to bail persons accused of any crime whatsoever (including treason and capital offences), but as respects indictable offences which, before the enacting of the Criminal Code, were felonious, it is within their discretion to grant or refuse the application for bail. With respect to indictable offences which were formerly misdemeanours, the accused is entitled to be admitted to bail as a matter of right. 2. The propriety of admitting to bail for indictable offences which were formerly classed as felonies should be determined with reference to the accused person's opportunities for escape, and to the probability of his appearing for trial. To determine this point it is proper to consider the nature of the offence charged and its punishment, the strength of the evidence against the accused, his character, means, and standing. Where a serious doubt exists as to his guilt the application for bail should be granted, If, on the evidence, it stands indifferent whether he is guilty or innocent, the rule generally is to admit him to bail; but if his guilt is beyond dispute, the general rule is not to grant the appli-

cation for bail unless the opportunities to escape do not appear to be possible and it is consequently almost certain that he will appear for trial. The fact that the application for bail is not opposed either by the Attorney-General or the private prosecutor may also be taken into account by the court or Judge. REX v. FORTIER, Q. R. 13 K. B. 251, 23 Occ. N. 115.

14. **Commission** — DEFAMATORY LIBEL — TIME OF APPLICATION.]—It is not too late to move at the trial of an indictment of defamatory libel for a commission to take evidence, as the accused is entitled to all of the time up to his arraignment to consider whether he would plead justification. REGINA v. NICOL, 5 C. C. C. 31, 8 B. C. R. 276, 22 Occ. N. 75.

15. **Demurrer to an Indictment Against a Corporation.**]—Old practice prevails respecting demurrer to an indictment against a corporation for maintaining a nuisance. REGINA v. TORONTO STREET RAILWAY CO., 4 C. C. C. 4.

16. **Judicial Committee of Privy Council** — HYPOTHETICAL QUESTIONS.]—It is contrary to the established practice of the Judicial Committee of the Privy Council to give any judicial opinion on hypothetical questions. When questions arise, they must arise in concrete cases, involving private rights. ATTORNEY-GENERAL v. HAMILTON R. W. CO., 7 C. C. C. 326, (1903), A. C. 524.

17. **Habeas Corpus Application** — PRISONER'S AFFIDAVIT.]—An application for a writ of habeas corpus in a criminal matter cannot be entertained without the prisoner's affidavit or evidence of his coercion. REGINA v. BLACK, 8 C. C. C. 465.

18. **Summary Conviction** — FAILURE TO TAKE DEPOSITIONS IN WRITING — CERTIORARI.]—A summary conviction for assault was quashed because the magistrates did not take down the evidence in writing. DANAULT v. ROBIDA, 8 C. C. C. 501, Q. R. 10 S. C. 199.

19. **Summary Proceeding** — FAILURE TO PROVE SERVICE OF SUMMONS.]—A conviction for being a vagrant was quashed on the ground that no evidence was given of the service of the summons on the accused, he not appearing at the hearing. REX v. LEVESQUE, 8 C. C. C. 505, 6 Q. P. R. 64.

20. **Supreme Court Appeal.**]—By s. 31 of the Supreme and Exchequer Courts Act (R. S. C., c. 135, s. 31), "no appeal shall be allowed in any case of proceedings for or upon a writ of habeas corpus arising out of any claim for extraditing made under any treaty." On application to the court to fix a day for hearing a motion to quash such an appeal :—Held, that the matter was cora non judice and there was no necessity for a motion to quash. IN RE LAZIER, 29 S. C. R. 630.

21. **Warrant of Commitment** — ARREST IN ANOTHER COUNTY — FAILURE TO INDORSE.]—It is no ground for the discharge of a prisoner that the warrant of commitment, where the prisoner had been arrested in another county, was not endorsed by a justice of that county. REX v. WHITESIDE, 8 C. C. C. 478, 4 O. W. R. 113, 237, 8 O. L. R. 622.

See also APPEAL — BAIL — CERTIORARI — INDICTMENT — JURY — SPEEDY TRIAL — STATED CASE — TRIAL.

PRACTISING MEDICINE.

1. **Practising Medicine**—MANUAL MANIPULATION FOR REWARD DOES NOT CONSTITUTE.]—Manual manipulation of a patient for reward with the object of curing disease, even where it follows upon a close enquiry from the patient as to his symptoms is not a practising of medicine within either the letter or spirit of the Ontario Medical Act. REGINA v. VALLEAU, 3 C.C.C. 435 (Ont.), 20 Occ. N. 310.

2. **Vendor of Patent Medicines** — B. C. MEDICAL ACT.]—Where a seller of patent medicines calls upon people to submit to personal manipulation or inspection, and the only charge made is for the medicine sold it is practising medicine for gain or hope of reward, within the meaning of the British Columbia Medical Act. REGINA v. BRANFIELD, 3 C. C. C. 161.

See MEDICINE.

PRAIRIE FIRES.

1. **Prairie Fire Ordinance** — RAILWAY ENGINE — ESCAPE OF FIRE.]—An ordinance of the Territories prohibited the kindling and placing of fire "in the open air in any part of the Territories," except for certain purposes. The defendants, who were respectively fireman and engineer on a freight trian, were severally convicted of a breach of the ordinance upon evidence to the effect that sparks from the fire which they had kindled in the locomotive engine had kindled a fire on the adjacent prairie, there being, as the magistrate found, no evidence of improper construction of the engine, or of negligence on the part of the defendants :—Held, that these facts afforded no evidence of the defendants kindling a fire "in the open air." REGINA v. CLIVE, REGINA v. HOLDSWORTH, 1 Terr. L. R. 170.

PRECEDENT.

1. **Following Decisions.**]—As the court of appeal for criminal cases is now constituted, the decision of the Judges of one court is not binding on Judges sitting as another court of co-ordinate jurisdiction. REGINA v. HAMMOND, 29 O. R. 211.

PREJUDICE.

1. **Amendment of Indictment** — PREFERRING NEW CHARGE FROM THAT IN COMMITMENT — CODE SEC. 641-743.]—Where a prisoner was committed for trial on a charge of theft, and an indictment was preferred charging false pretences, it was held that the indictment would lie, where the evidence at the preliminary hearing and at the trial supported the latter charge. An amendment was also allowed striking out words in the indictment considered as unnecessary, and the question of prejudice was one for the trial Judge, and he having been of the opinion that the defence was not prejudiced, it was not open to the accused to raise the point on the case reserved. R. v. PATTERSON, 2 C. C. C. 339.

See also INDICTMENT — JUSTICE OF THE PEACE — PRISONER.

PRELIMINARY DEPOSITION.

See DEPOSITION — EVIDENCE.

PRELIMINARY ENQUIRY.

1. **Before Magistrate** — DISCRETION — EVIDENCE — RE-OPENING.]—In a criminal matter the preliminary enquete before the magistrate in respect of an offence which may be prosecuted by way of information, is not, properly speaking, the enquete of the complainant, but that of the magistrate. 2. At the time of the preliminary hearing, after the enquete of the prosecution has been declared closed, and nothing has been shewn against the accused, and even after the parties have been heard as to the legal effect of the evidence, the magistrate has a discretion to permit the prosecutor to re-open the enquete to make more ample proof. BELANGER v. MULVENA, Q. R. 22 S. C. 37.

2. **Evidence for the Defence.**]—Remarks upon the general right of a person charged before a magistrate with an indictable offence to call witnesses for his defence; and of a person whose extradition is demanded to shew by evidence that what he is charged with is not an extradition crime :—Semble, that the evidence here offered, as stated in the report of the case was not improperly rejected. IN RE PHIPPS, 8 A. R. 77.

3. **Evidence for the Defence.**]—The magistrate should not go beyond a bare inquiry as to the prima facie evidence of criminality of the accused, and should not inquire into matters of defence which do not affect such criminality. IN RE CALDWELL, 5 P. R. 217.

4. **Holding on Sunday** — ILLEGALITY OF — CRIM. CODE 729.]—The holding of a preliminary inquiry on Sunday is illegal, and is not affected by Crim. Code sec. 729, which refers only to matters before a jury. REGINA v. CAVELIER, 1 C. C. C. 134, 11 Man. L. R. 333.

5. **Locality of Crime** — JURISDICTION OF MAGISTRATE.]—A magistrate has power to hold a preliminary inquiry if accused are found or apprehended within the

jurisdiction, although the offence may be committed outside his territorial jurisdiction. REGINA v. BURKE, 5 C. C. C. 29.

6. **Remand** — TIME.]—A magistrate has no jurisdiction to remand an accused person for eight days, without having the accused brought before him. RE SARAULT, 9 C. C. C. 448.

7. **Rule as to Reasonable Doubt.**]—At a criminal trial the rule is for the jury to give the benefit of a reasonable doubt to the accused, but at a preliminary enquiry when there is a doubt in the case a contrary rule prevails, and it must go in favor of committal, not in favor of discharge. EX PARTE FEINBERG, 4 C. C. C. 270.

8. **Summary Conviction on Preliminary Enquiry.**]—On a preliminary enquiry of an indictable offence, a magistrate has no power to summarily convict for a lesser offence over which he would have had jurisdiction if it had been originally charged. EX PARTE DUFFY, 8 C. C. C. 277.

See also CONVICTION.

PRELIMINARY OBJECTION.

1. **By Demurrer in Indictment Against a Corporation.**]—Preliminary objection must be made to an indictment against a corporation for maintaining a nuisance by demurrer, and not by a motion to quash. REGINA v. TORONTO STREET RAILWAY CO., 4 C. C. C. 4.

See INDICTMENT — NEW TRIAL.

2. **Authority of Court in Banco to Enquire into Validity of Objections taken at Trial on Behalf of Prisoner ond Overruled** — PRISONERS JOINTLY INDICTED — ORDERING ACQUITTAL OF ONE — SEPARATION OF JURY.]—When in a case of felony objections were taken by the prisoner's counsel, in arrest of judgment, but overruled by the Judge trying the cause, the court in banco have authority to inquire into the validity of those objections. The presence of the prisoner at the argument is not necessary. The Judge is not bound to order acquittal of one of the prisoners joined in an indictment at the close of the case for the Crown, where evidence is to be adduced on behalf of the other prisoners. The separation of the jurors, and even their conversation with strangers relative to the trial during its pendency, are not in themselves sufficient to destroy the verdict. QUEEN v. KENNEDY, 2 Thom., N. S. R. 203.

3. **Comment by Judge on Failure to Testify.**]—The prisoner was indicted for theft, and the Judge in charging the jury remarked, "If he is not guilty it is very easy for him to prove he was not in the locality that day. Of course, he had the opportunity of going on the stand, but at the same time that is not to affect him. He is not bound to go on the stand, and it is not to be taken against him that he did not; but you have a right to draw the inference, that if he were an innocent man he could show where he was that day. Now, he has not done that."—Held that it was a contravention of the Canada Evidence Act, sec. 4, and a new trial should be ordered. R. v. MCGUIRE, 9 C. C. C. 554, 36 N. B. R. 609.

4. **Detaining Prisoner to Allow Case to be Strengthened.**]—Quære, can a committing magistrate detain a prisoner upon the evidence amounting only to a ground of suspicion, for the purpose of other evidence being imported into the case so as to bring it within the treaty. IN RE KERMOTT, 1 C. L., Ch. 253.

5. **Election for Summary Trial** — CODE 786.]—The option of a jury trial ought to be placed before the accused before the magistrate obtains consent to a summary trial. R. v. SHEPHERD, 6 C. C. C. 463.

6. **Failure to Testify Commented on by Judge** — RIGHT TO NEW TRIAL — CHANGE OF VENUE — TERMS AS TO EXPENSE — CODE SEC. 743.]—Where the presiding Judge inadvertently commented on prisoner's failure to testify, a new trial should be granted, as being contrary to sec. 4 of the Canada Evidence Act, 1893; and the effect of the comment cannot be said to have been removed by the act of the trial Judge in recalling the jury and informing them that he had inadvertently commented on the failure of the accused to testify, and that he ought

not to have done so, since the law forbade it. For the thing that the legislature has forbidden was done, and it could not, from its very nature be undone. R. v. COLEMAN, 2 C. C. C. 531, 30 O. R. 93.

7. **Habeas Corpus** — WARRANT OF COMMITMENT NOT SHEWING CONVICTION — EFFECT OF — FORM OF RULE NISI — DISPENSING WITH PRESENCE OF PRISONER OR ARGUMENT OF.]—EX PARTE ETLAMASS, 2 B. C. R. 232.

8. **Inspector of Prisons** — RULES.]—As to authority of inspector of prisons to make rules creating an indictable offence. See HAMILTON v. MASSIE, 18 O. R. 585.

9. **Joint Indictment** — SEPARATE TRIALS — EVIDENCE OF PRISONER AGAINST OTHER — COMMENT ON FAILURE OF DEFENCE TO CALL WITNESS.]—1. An accomplice in the committing of the offence of rape, where two prisoners are jointly indicted, and separate trials ordered, is not a person charged within the meaning of the Canada Evidence Act, sec. 4. 2. Such person is a competent and compellable witness against the other, though his evidence may not be used against himself if he claims protection. R. v. BLAIS, 10 C. C. C. 354.

10. **Money** — TAKEN BY POLICE.]—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.

11. **Name of** — WRONGLY DESCRIBED IN CONVICTION.]—Where the accused was charged and convicted under a wrong name, and she pleaded to the charge, it was held to be too late to raise objection on habeas corpus proceedings. The time to object was before pleading, when amendment could have been made. R. v. CORRIGAN, 2 C. C. C. 591, Q. R. 9 Q. B. 43.

12. **Right of Counsel to Reply** — WHERE NO DEFENCE OFFERED — CODE SEC. 661.]—Prisoner's counsel has right to last address the jury where no evidence is offered for the defence. The right of reply referred to in Code sec. 661 means a right of the prosecuting attorney to again address the jury after the close of the evidence. R. v. LE BLANC, 6 C. C. C. 348, 29 C. L. J. 729.

13. **Right of Prisoner to Make Statement to Jury After his Counsel's Address.**]—Notwithstanding the prisoner calls no evidence, if he makes such a statement, the Crown has the right of reply. REGINA v. ROGERS, 1 B. C. R., pt. II., 119.

14. **Right of, to Mixed Jury.**]—The right or privilege of a prosecuted party to a mixed jury in the province of Quebec is a privilege or right personal with the accused, and depends on the language of the prisoner. It is therefore not the subject of election optional with the accused for the convenience of counsel. R. v. YANCY, 2 C. C. C. 320.

15. **Speedy Trial** — NO RIGHT OF ELECTION AFTER A BILL OF INDICTMENT PREFERRED.]—1. A waiver of the constitutional right of trial by jury can be made only in following out a compliance with the statutory provisions in that behalf; the only cases under the Code in which accused persons are allowed speedy trials are those in which an information has been laid, and a committal for trial ordered. 2. If no election has been made before a bill of indictment is returned founded on the facts disclosed in the depositions, the accused has no statutory right to demand a speedy trial. 3. The right to prefer a subsequent charge by sec. 773, with the consent of a Judge at the speedy trial, permits the preferment only of a charge cognate to the one for which the accused was committed. R. v. WENER, 6 C. C. C. 406.

16. **Venue** — SHERIFF'S 1873 AMENDMENT ACT, 1878 — CRIMINAL LAW PROCEDURE ACT, 1869 (CAN.).]—British Columbia was divided into judicial districts by the above Acts:—Held, overruling Walkem J. in Regina v. Malott (1 B. C. R., pt. II., p. 207), a criminal must be tried in the county or judicial district where the crime is alleged to have been committed, in this case Kootenay district, and not Kamloops, where the trial took place, and prisoner discharged upon writ of error and ordered to be tried again. MALOTT v. REGINAM, 1 B. C. R., pt. II. 212.

See also ARREST — BAIL — CERTIORARI — EVIDENCE — ELECTION — INDICTMENT — JURY — TRIAL.

PRIVATE PROSECUTOR.

1. **By-Law** — WHOLE PENALTY TO GO TO THE MUNICIPAL CORPORATION.]—The power to institute proceedings for breach of a by-law which provides the whole penalty is to go to the municipal corporation, is not limited to an information laid by or on behalf of the municipality, but may be instituted by any person. REGINA v. CHIPMAN, 1 C. C. C. 81, 5 B. C. R. 349.

2. **Costs.**]—Where an indictment for obstructing a highway had been removed by certiorari, at the instance of the private prosecutor, into this court, and the defendant had been acquitted :—Held, that there was no power to impose payment of costs on such prosecutor. REGINA v. HART, 45 U. C. R. 1.

The court, however, has power to make payment of costs a condition of any indulgence granted in such a case, such as the postponement of the trial or a new trial IB.

3. Evidence that defendant was private prosecutor in an action by plaintiffs to recover costs under R. S. C., c. 8, s, III. See MAY v. REID, 16 A. R. 150.

4. **Death of** — QUASHING CONVICTION — FAILURE TO SERVE.]—The complainant having died before service of the order nisi to quash a conviction could be effected on him, it was held that it did not put an end to the proceedings. The complainant is not a party to the record, although his name appears, and in certain events he may be made liable for costs. REGINA v. FITZGERALD, 1 C. C. C. 420, 29 O. R. 203.

5. **Grand Juror.**]—Where one of the grand jurors, by whom an indictment for forcible entry and detainer was found at the sessions, was the prosecutor, the indictment having been removed into the Supreme Court, was quashed, though after plea. REGINA v. CUNARD ET AL., Ber. N. B. R. 326 (*500).

Affidavits showing that the prosecutor was not present when the bill was found by the grand jury, and took no part in the matter, were not received : His name appearing as one of the jurors in the caption of the indictment as returned on the certiorari.

6. **Leave to Appeal Against Acquittal.**]—Leave to a private prosecutor to appeal against an acquittal before a police magistrate will only be granted under special circumstances. REX v. BURNS, 4 C. C. C. 323, 1 O. L. R. 336.

7. **Right to take Part in Proceedings.**]—Held, on motion for a certiorari, that, though it is the right of everyone to make a complaint with a view to the institution of criminal proceedings, and also, under certain circumstances, to prefer a bill of indictment, yet the prosecutor is no party to the prosecution, and cannot insist that he, or counsel retained by him, shall aid in the conduct of the prosecution. REX v. GILMORE, 23 Occ. N. 298, 6 O. L. R. 286, 2 O. W. R. 710.

PRIVILEGE.

1. **Evidence** — PROSECUTOR SWEARING OUT INFORMATION — REFUSAL TO ANSWER AS TO PLACE AND DATE OF SWEARING] —A person swearing out an information purporting to be sworn at a particular time and place, is not privileged from answering on cross-examination questions tending to show such information was not sworn at the time and place it purported to be. EX PARTE SONIER, 2 C. C. C. 123, 34 N. B. R. 84.

2. **Witness** — IMMUNITY FROM ARREST — APPLICATION OF COMMON LAW D-TRINE].—The claim of privilege of a witness to the protection of the court does not extend to protect him from the consequences of a criminal offence committed by him, while absent from home to give evidence. If, however, the proceedings were taken with the object of intimidating the witness, it would perhaps be a ground for the intervention of the court. R. v. EWAN, 2 C. C. C. 279.

See also EVIDENCE — WITNESSES.

PRIZE FIGHTING.

1. **Boxing Exhibition** — CODE SEC. 92-95.]—A grand athletic exhibition was advertised, the contest to be under Marquis of Queensbury Rules, for points, for the sum of $200. An admission fee was charg-

ed, all the paraphernalia of a prize-fight was employed, and an apparent knock out terminated the fight:—Held, that it was a prize-fight within sec. 92 of the Code, and it was immaterial whether it was a sham or farce, since it was intended to be genuine so far as the public were concerned. STEELE v. MABER, 6 C. C. C. 449, Q. R. 19 S. C. 392.

2. **Crim. Code Sec. 92** — SPARRING EXHIBITION — POLICE SUPERVISION.]—A sparring exhibition with gloves and according to Queensbury or similar rules is not an offence at law, but if the parties meet intending to fight till one gives in from exhaustion or injuries received, it is a prize fight, whether the combatants use gloves or not. But where a license for an exhibition is granted by the mayor, the exhibition taking place in the presence of the police, and the gloves having been examined by the police, and no police interference having been made till one of the combatants having been counted out, and it being a matter of serious doubt whether the defendant fell, and became insensible in consequence of the blow he received, or because he tripped on the bare boards, it was held that no prize fight had taken place, and conviction quashed. REX v. LITTLEJOHN, 8 C. C. C. 212.

3. **What Constitutes.**]—The defendants advertised a boxing exhibition, which was held in a public hall, and was accompanied by all the particulars and circumstances of a prize-fight. Complainant submitted that accused came within the provisions of the statute; and on behalf of the defendants it was contended that the encounter was merely a scientific boxing parade, and moreover a sham fight not forbidden by law:—Held, that, as the proof adduced established that the encounter in question was accompanied by all the circumstances and elements which constitute a prize-fight, the defendants committed an infraction of the law, Criminal Code, ss. 92-95, for which they must be found guilty. STEELE v. MABER, Q. R. 19 S. C. 392.

PROCURING.

1. **Inducement Offered in Foreign Country** — JURISDICTION.]—Where the evidence shows that the inducement which led a girl to come to Canada to become an inmate of a brothel in Canada, was offered in the United States and the prisoner was not a British subject, the police magistrate had no power to commit the accused for trial. RE GERTIE JOHNSON, 8 C. C. C. 243.

2. **Warrant of Commitment** — APPLICATION OF CODE SEC. 800 AS A CURATIVE OF DEFECT IN.]—Objection was taken to the warrant of commitment as being bad for duplicity and uncertainty. The conviction recited in it was for "unlawfully procuring or attempting to procure a girl of seventeen years to become, without Canada, a common prostitute, or with intent that she might become an inmate of a brothel elsewhere." The conviction thus recited held invalid for uncertainty and duplicity.—Held, also, that sec. 800 of the Crim. Code providing that a commitment was not to be held void by reason of a defect therein, where a conviction was recited and there was a good and valid conviction to sustain it, did not prevent the objection being fatal, as the conviction itself disclosed no offence within sec. 185 under which the charge was laid. The conviction was that the prisoner "at Hamilton aforesaid, in the county aforesaid, did unlawfully procure a girl of seventeen years, Ida Dawson, to become without Canada, an inmate of a brothel, kept by the said Maud Gibson at Lockport, in the state of New York, etc." R. v. GIBSON, 2 C. C. C. 305.

PROHIBITION.

1. **Canada Temperance Act** — COUNTY COURT PROHIBITED FROM PROCEEDING WITH CERTIORARI TO REMOVE CONVICTION UNDER CANADA TEMPERANCE ACT — REFERENCE BY JUDGE AT CHAMBERS TO COURT IN BANC — A CONVICTION UNDER THE CANADA TEMPERANCE ACT REMOVED TO THE COUNTY COURT BY CERTIORARI.]—The prosecutor applied to a Judge of the Supreme Court at chambers for a writ of prohibition to prohibit the county court from further proceeding on the certiorari, and the order nisi for the writ of prohibition was by a Judge presiding at chambers referred to the court in Banc. Defendant's counsel objected that the Judge at chambers could

not so refer the application :—Held, that the writ of prohibition must be allowed, but without costs. QUEEN v. O'NEIL, 20 N. S. R., (8 R. & G.) 530.

2. **Corporation** — TRADE MARK — CHARGE OF SELLING GOODS WITH FALS DESCRIPTION.]—A charge against a corporation of selling goods to which a false trade description is applied, is a subject of indictment, and not triable summarily before a magistrate. A writ of prohibition will be granted directed to the magistrate to prevent him from proceeding with the trial in such case. Costs allowed against informant. R. v. T. EATON CO., 2 C. C. C. 252, 31 O. R. 276.

3. **De Facto Judicial Officer.**]—A writ of prohibition will not lie to determine the title of a de facto judicial officer, since its only function is to prevent a usurpation of jurisdiction by a subordinate court. The appropriate remedy is quo warranto. EX PARTE GAYNOR AND GREENE, 9 C. C. C. 240.

4. **Interest of Magistrates** — CANADA TEMPERANCE ACT.] — Prohibition was granted restraining the defendants from executing a conviction made against the plaintiff under the Canada Temperance Act, on it being proven that the magistrates were members of the Dominion Temperance Alliance at the time the information was laid, and summons issued, though they had withdrawn from the Alliance before the hearing of the charge, and it also appearing that the said Alli ance received all fines recovered by prosecutions under the said Act, pursuant to a resolution of the Municipal council. DAIGNEAULT v. EMERSON, 5 C. C. C. 534, Q. R. 20 S. C. 310.

PROMISSORY NOTE.

See FORGERY.

PROOF.

1. **Burden of.**] – The burden is on the Crown to prove that an accused's confession of guilt was free and voluntary. REGINA v. PAH-CAH-PAH-NE-CAPI, 4 C C. C. 93, 17 C. L. T. 306.

2. **Onus of** — WANT OF REASONABLE OR PROBABLE CAUSE.]—In a prosecution for demanding property with menaces (Crim. Code sec. 403) onus of proof of want of reasonable or probable cause is on the prosecution. REGINA v. COLLINS, 1 C. C. C. 48.

See also EV DENCE.

PROPERTY.

1. **Identity** — PROOF OF — CRIM. CODE 836-838.]—In order to entitle the prosecutor to receive money found on a person convicted of theft of money there must be proof of identity of the money with that which the accused had stolen from him, or an application for compensation for loss of property must be made immediately after conviction. REX v. HAVERSTOCK, 5 C. C. C. 113.

2. **Restoration of to Prisoner, when Deprived of After Arrest.**]—By virtue of the Judicature Act, a Judge of the Supreme Court of Nova Scotia has jurisdiction to order the restoration of property taken from a prisoner by the police on his arrest, where such property has no relation to the offence alleged. EX PARTE MACMICHAEL, 7 C. C. C. 549.

PROSTITUTION.

Prostitution — DEFINITION — SEXUAL INTERCOURSE WITH ONE MAN EXCLUSIVELY — CRIM. CODE 207 (1).]—Prostitution in a legal sense means indiscriminate sexual intercourse with men, and where a woman is kept and supported by a man with whom alone she had illicit sexual intercourse, she cannot be said to have been supported by the avails of prostitution. REGINA v. REHE, 1 C. C. C. 63.

See also BAWDY HOUSE — VAGRANCY.

PROVOCATION.

1. **A Fact for Determination of Jury.**]—New trial granted where certain preliminary questions essential to determining whether there was sufficient provocation

to reduce homicide from murder to manslaughter, were not submitted to the jury. REGINA v. BRENNAN, 4 C. C. C. 41, 27 O. R. 659.

See also ASSAULT — MENS REA — MURDER — AND MANSLAUGHTER.

PUBLIC HEALTH.

1. **Regulations.**] — PENALTY — MISDEMEANOUR.]—By Act Wm. IV., c. 28, s. 5, boards of health were authorized to make such rules and regulations for the preservation of the public health, and the prevention of infectious distempers, with such penalties and forfeitures for breach thereof as they might deem necessary. By subsequent sections of the Act they were authorized to enter buildings and cause the removal of anything injurious to health; to close up streets, etc.; to prevent intercourse with vessels, and order them to quarantine; and by section 11, whoever should violate any of the orders of the board, or wilfully neglect to act in obedience thereto, or should resist or obstruct the lawful execution of any such orders, should for every offence "be deemed guilty of, and punishable as for a misdeameanour." The board made a regulation against the use of slaughter houses within certain limits, but attached no penalty to the breach of it :—Held, 1st, that the omission of a penalty did not render the regulation void; and that the defendant was liable to indictment for a breach of it either at common law or under the 11th section; 2nd, that the 11th section applied to the violation of any regulation or order the board was authorized to make, and was not limited to the orders authorized by the sections of the Act, subsequent to the 5th section. REGINA v. HARTT, Trin. T., 1833, N. B. R.

2. **Public Health.**]—Held, that the unloading of manure from a car on a certain part of railway premises into wagons, to be carried away, came within the terms of a by-law, amending the by-law appended to the Public Health Act, R. S. O., 1887, c. 205, and prohibiting the unloading of manure on said part of said premises; that the use of the word "manure" in the amending of the by-law was not of itself objectionable; and that it was not essential to shew that the manure might endanger the public health. A conviction for unloading a car of manure on the premises, as contrary to the by-law, was therefore affirmed. REGINA v. REDMOND, REGINA v. RYAN, REGINA v. BURK, 25 O. R. 272.

PUBLIC MEETING.

1. **Disturbing Public Meeting** — MUNICIPAL ELECTION — CRIMINAL CODE] — Article 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, of by making a noise, does not apply to a meeting of electors called by one of the candidates during a municipal election. Articles 2946 to 2964, R. S. Q., sufficiently provide for the preservation of order at public meetings other than those mentioned in art. 173, Criminal Code. REX v. LAVOIE, Q. R. 21 S. C. 128.

2. **Disturbing** — CODE SEC. 173.]—Accused was charged with an offence under sec. 173 of the Code which makes an offence to disturb, interrupt, or disquiet any assemblage met for religious worship, or for any social, moral or benevolent purpose, etc. :—Held, that this section was not intended for the preservation of order at a political or municipa meeting. R. v. LAVOIE, 6 C. C. C. 39, Q. R. 21 S. C. 128.

PUBLIC MORALS.

By-Laws Against 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.

PUBLIC OFFICIALS.

1. **Audit Department** — Pecuniary Damage.]—An officer in the public service of Canada having charge of the public dredging and whose duty it was to audit the 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 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, 23 O. R. 201.

2. **Sheriff.**]—The statute 5 & 6 Edw. VII., c. 16, against buying and selling of offices, is in force in this country under 40 Geo. III., c. 1, as part of the criminal law of England. Any act done in contravention of that statute is indictable though not specially made so :—Quære, whether it is also introduced by 32 Geo. III., c. 1, which adopts the law of England "in all matters of controversy relative to property and civil rights," 49 Geo. III., c. 126, clearly extends 5 & 6 Edw. VI. to Upper Canada, and to the office of sheriff. Foott v. Bullock, 4 U. C. R. 480, approved. Regina v. Mercer, 17 U. C. R. 602, Regina v. Moodie, 20 U. C. R. 389.

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 the 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 the 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 & 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. Ib.

PUNISHMENT.

1. **B. C. Municipal Clauses Act** — Sec. 81 — Separate Courses of Procedure.]—Sec. 81 of the B. C. Municipal Clauses Act provides that on default of payment of fine, the offender may be committed to gaol; subsection 2 provides for awarding the penalty as the justice sees fit, and says he may by warrant cause the penalty to be levied by distress, and in case of insufficient distress issue commitment :—Held, that the section is to be read as relative to separate and distinct courses of procedure, in the one case imprisonment in case of non-payment of the fine, and in the other, fine to be levied by distress and followed by imprisonment in case of insufficient distress. Regina v. Petersky, 1 C. C. C. 91.

2. **Of Corporation Guilty of Crime** — Breach of Duty.]—The punishment of a corporation for causing "grievous bodily harm" is a fine, and section 934 leaves the amount of the fine to the discretion of the court. Regina v. Union Colliery Co., 3 C. C. C. 523, 7 B. C. R. 247.

3. **Statute Imposing both Fine and Imprisonment.**]—Discretion of court in imposing of penalty under sec. 932 of Crim. Code. The court has discretion to impose either one or both punishments unless the specific statute expressly shows a contrary intention. Regina v. Robidoux, 2 C. C. C. 19.

See also Certiorari — Conviction — Habeas Corpus.

QUI TAM ACTION.

See Justice of the Peace.

RAILWAYS.

1. **Constitutional Law.**]—The legislature of the N. W. Territories has power to legislate requiring a railway company operating under Dominion charter to so equip its engines as to eliminate as far as possible the danger from sparks being emitted therefrom. This falls under the power to legislate on merely local or private matters and on property and civil rights. R. v. C. P. R. Co., 9 C. C. C. 335, 1 W. L. R. 89.

2. **Railways** — GRAIN SHIPMENT — MANITOBA GRAIN ACT.]—Under the Manitoba Grain Act a station agent contravenes the statute by giving a preference to elevator companies in the allotment of cars at a railway, thereby failing to fill a prior requisition of a private individual shipper who applied for a single car only, but which requisition was duly entered in the agents' order book in pursuance of the statute. REX v. BENOIT, 6 C. C. C. 351, 5 Ter. L. R. 442.

RAPE.

1. **Admissibility of Name of Accused Mentioned in Injured Party's Complaint.**]—The name of the person accused of rape by the injured party is admissible in evidence as one of the details and particulars of the complaint made by the injured party after the commission of the offence. REGINA v. RIENDEAU, 3 C. C. C. 293, 14 Man. L. R. 434, 23 Occ. N. 236.

2. **Admissibility of Statement of Prosecutrix.**]—A statement by a prosecutrix on a charge of rape, made the next day after the alleged commission of the offence, is not admissible as evidence it being held that too great a time had elapsed, and that the statement was not the unstudied outcome of the feelings of the accused. REGINA v. GRAHAM, 3 C. C. C. 22, 31 O. R. 77.

3. **Aiding and Abetting** — EVIDENCE — RELATIONS OF PROSECUTRIX WITH WITNESS — REFUSAL TO ANSWER — CODE SEC. 746 (f).]—1. The prosecutrix may be asked questions to show her general character of chastity is bad. She is bound to answer such questions and if she refuses the fact may be shewn. She may also be asked whether she had previously had connection with the prisoner and if she denies, it may be shewn. She may also be asked, but it is not generally compellable to answer, whether she had had connection with persons other than the prisoner. 2. Where, however, a witness for the prosecution other than the prosecutrix, was asked whether he had had connection with the prosecutrix, the question having a wider tendency in his case, affecting as it does his bias or partiality as a witness, he is compellable to answer it. 3. Where the trial Judge ruled that such question was not one which witness was bound to answer, and evidence was thereby improperly rejected, it is a case for the application of Code sec. 746 (f), if there was sufficient independent evidence to justify the conviction. R. v. FINNESSEY, 10 C. C. C. 347.

4. **Attempt to Commit** — FAILURE OF CROWN TO SHEW THAT PROSECUTRIX NOT WIFE OF PRISONER — OBJECTION — LEAVE TO APPEAL.]—REX v. MULLEN, 5 O. W. R. 451.

5. **Civil Suit Pending.**]—Upon a charge of rape, evidence is not admissible by the defence to show that civil suits for damages had been instituted against the accused, unless it had been alleged and proved that the parties bringing the civil suits had attempted to extort money from the accused. REGINA v. RIENDEAU, 3 C. C. C. 293, Q. R. 9 Q. B. 147.

6. **Cross-Examination of Prosecutrix** — PREVIOUS CONNECTION WITN 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. LALIBERTE v. THE QUEEN, 1 S. C. R. 117.

7. **Evidence** — COMPLAINT — PARTICULARS OF — INTERVAL — CIVIL ACTION — RELATIONS WITH ACCUSED AFTER

OFFENCE.]—1. On a trial for rape, the fact that the injured person made a complaint and the particulars or details of complaint are admissible as evidence in chief for the prosecution to confirm the testimony of the injured person and disprove consent on her part; and among the particulars the name of the person whom she accused of the offence may be stated. 2. While the injured person should make her complaint as soon as possible after the commission of the offence, yet no specific time for such complaint being fixed by law, evidence may be admitted of a complaint made by her to her mother seven days after the offence; but the jury may and should weigh the interval which elapsed before the complaint was made. 3. Evidence that civil suits for damages based on the alleged commission of rape, have been instituted by the tutor of the injured person (a minor) on her behalf, and also by her mother, may be excluded as irrelevant on the trial for rape, unless it be first proved that the injured person and her mother had stated or let it be inferred that the accused was innocent of the offence charged, and that they had appeared to be desirous of extorting money from him. In such case, the fact that civil actions had been instituted would be corroborative evidence. Judgment in Q. R. 9, Q. B. 147 confirmed. 4. Evidence that the accused and injured person were on friendly terms after the commission of the alleged offence, and thât she angrily resented the interference of her mother when the latter wished to put an end to such intimacy, should have been admitted, such evidence being important to enable the jury to judge whether or not there was consent on the part of the person injured. Judgment in Q. R. 9 Q. B. 147 reversed. REX v. RIENDEAU, Q. R. 10 K. B. 584.

8. **Evidence** — RELEVANCY OF STATED CASE.]—On a conviction for rape, the complainant had denied at the trial that she had insulted or assaulted her mother upon an occasion subsequent to the alleged offence in the presence of the accused. It was attempted by the defence to contradict the denial of the complainant, and a question to that effect was put to one of the accused's witnesses. The Crown objected to the question and the objection was allowed by the trial Judge. The question of the relevancy of the evidence tendered by the defendant was brought up by a stated case, and it was held that the evidence thus offered by the accused was pertinent and material. The sentence and verdict were quashed, and a new trial ordered. REX v. RIENDEAU, 4 C. C. C. 421, Q. R. 10 K. B. 584.

9. **Evidence of Particulars of Complaint.**]—Evidence of the particulars or details or a complaint made by a woman upon whom a rape is alleged to have been committed is admissible, not as independent or substantive evidence to prove the truth of the charge, but as corroborative evidence to confirm her testimony. REGINA v. RIENDEAU, 3 C. C. C. 293, 14 Man. L. R. 434, 23 Occ. N. 236.

10. **Evidence** — STATEMENTS OF PRISONER — STATEMENTS OF COUNSEL.]—On a trial for rape, the evidence of the prosecution 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, 21 O. R. 189.

11. **Evidence of Time Between Commission of Offence and Complaint.**]—On a charge of rape, the court decides whether, under the circumstances of the case, the complaint has been made within a sufficiently recent time, and, if that is so, the fact that a complaint was made and its terms are admissible in evidence, but the jury may, and should weigh the time which elapsed before the complaint was made when considering the probability of its truth. REGINA v. RIENDEAU, 3 C. C. C. 293. Q. R. 9 Q. B. 147.

12. **Finding of Fact** — FEAR OR SOLICITATION.]—The defendant was indicted for committing 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 directions in such a case. REGINA v. CARDO, 17 O. R. 11.

13. **Girl Under Fourteen** — CODE SECS. 266-267-269.]—The crime of rape may be committed upon a girl under fourteen years of age, and an indictment under sec. 266-267 of the Code is valid notwithstanding that the female is a girl under fourteen years, as the terms "man and "woman" as used in said secs. are to be construed in a generic sense to include all males and females comprehended both adults and children. Sec. 269 of the Code 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, by affording extra statutory protection to a particular class of girls, does not abolish the crime of rape regarding such. An indictment for rape under sec. 266 and 267 still lies against one who has ravished a girl under the age of fourteen. Since where force is used and the girl does not consent, there are circumstances connected with the act beyond those which constitute the offence of defilement, and which remove it from the purview of sec. 269 and bring it within the scope of sec. 266 and 267. Where there has been no violence, and the girl consented, the offence comes under sec. 269. R. v. RIOPEL, 2 C. C. C. 225.

14. **Idiot or Lunatic.**]—In the case of rape on 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, 26 U. C. R. 317.

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. IB.

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. IB.

15. **Indictment for Rape** — CONVICTION FOR COMMON ASSAULT.]—A prisoner indicted for rape may be found guilty of common assault, notwithstanding the complaint or information is not laid within six months under s. 841 of the Criminal Code. REGINA v. EDWARDS, 29 O. R. 451.

16. **Information for** — WITH INTENT TO EXTORT — MEANS TO ACCUSE OF.]—Where a person lays an information against another with intent to extort or gain anything (whether the accused is guilty or not), such information is an accusation within the mean ng of section 405 of the Code. REGINA v. KEMPEL, 3 C. C. C. 481, 31 Ont. R. 631.

17. **On Indictment for** — JURY FIND GUILTY OF ASSAULT.]—On an indictment for rape, the accused may be found guilty of the lesser charge of assault; and a conviction thereon is good though the time limit of six months provided by sec. 841, has expired. R. v. EDWARDS, 2 C. C. C. 96, 29 O. R. 457.

18. **Personating Husband**]—Having connection with a woman under circumstances which induce her to believe that it is her husband, does not amount to a rape. REGINA v. FRANCIS, 13 U. C. R. 116.

19. **Rape on Daughter** — EVIDENCE OF.] 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 be'ng ample evidence to sustain the charge, and it having been left to them with the proper direction in such a case. REGINA v. CARDO, 17 O. R. 11.

20. **Reasonable Doubt** — INSTRUCTIONS TO JURY.]—The mere refraining of a Judge to instruct the jury to give the benefit of a reasonable doubt to the prisoner cannot be construed as a misdirection, especially where in the estimation of the Judge no reasonable doubt could possibly arise in the minds of the jurymen. RERINA V RIENDEAU, 3 C. C. C. 293, Q. R. 9 Q. B. 147.

20. **Seduction.**]—A prisoner indicted and tried under s. 3, clause (a), of the act respecting offences against public morals and public convenience. R. S. C., c. 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 a conviction for rape, an indictment for which has been previously ignored by the grand jury. REGINA V. DOTY, 25 O. R. 362.

21. **Statement of Prosecutrix.**]—On a charge of rape it was sought to give in evidence statements made by the prosecutrix on the day following the alleged assault to a police magistrate who called upon her with reference to the matter:—Held, that the evidence was inadmissible. The statements were not made as the unstudied outcome of the feelings of the woman, nor as speedily after the occasion as could reasonably be expected. REGINA V. GRAHAM, 31 O. R. 77.

22. **Violently and Against Her Will.**]—The meaning of the words that the prisoner "violently, and against her will feloniously did ravish," is, that the woman has been quite overcome by force or terror, accompanied with 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 really was resisting to the utmost, and in this case the evidence was held sufficient to warrant a conviction. The facts, as they appeared in evidence, were left to the jury, who were also told that they must be satisfied before convicting 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 was not a consenting party" :—Held, a proper and full direction. REGINA V. FICK, 16 C. P. 379.

RECEIVING STOLEN PROPERTY.

1. **Connection of Principal** — PRESUMPTION — REBUTTAL.]—When the principal has been previously convicted the conviction is presumptive evidence that everything in the former proceeding was rightly and properly transacted, yet it is competent for the receiver to controvert the guilt of the principal. REGINA V. MCINTOSH, 5 C. C. C. 254, 22 S. C. R. 180.

2. **Conviction for** — CHARGE OF THEFT.]—Under s. 713 of the Criminal Code, a conviction for receiving stolen goods cannot be sustained where the charge was housebreaking accompanied with theft. REGINA V. LAMOUREUX, 21 Occ. N. 49, Q. R. 10 Q. B. 15.

3. **Differentiated from Theft.**]—The commission of the offence of theft, does not include the offence of receiving stolen goods, and upon a charge of housebreaking and theft a conviction, whatever may be the proof, cannot be rendered under the provisions of sec. 713 for the offence of receiving stolen goods. REGINA V. LAMOUREUX, 4 C. C. C. 101, Q. R. 10 Q. B. 15, 21 Occ. N. 49.

4. **Indictment for** — PRIOR CONVICTION FOR STEALING — RIGHT TO INSPECT INFORMATION AND DEPOSITIONS.]—By s. 11 of R. S. O. 1897, c. 324, "a person affected by any record in any court in this province, whether it concerns the King or any other person, shall be entitled, upon payment of the proper fees to search and examine the same, and to have an exemplification and a certified copy thereof made and delivered to him by the proper officer." The applicant was committed for trial at the sessions upon three charges of receiving cattle stolen from C. and two other persons, knowing them to have been stolen. At the previous sessions three persons were convicted of having stolen cattle from C., one of whom and two others were also convicted at the same sessions of having stolen cattle from S. No charge was pending against the applicant of having received cattle stolen from S. :—Held, that in such cases the question is whether the applicant would be affected by the records which he sought to examine, and that, while he might be so affected as regards the cattle stolen from C., and so entitled to the inspection asked

for, he was not so as regards those stolen from S. In re Chantler, and Clerk of the Peace of Middlesex, 24 Occ. N. 355, 8 O. L. R. 111, 3 O. W. R. 761.

5. **Receiving with Intent to Defraud** — Code 368 — Assignment.]—Defendant who had been legal adviser to C. & Co. and was their assignee under an assignment for the benefit of creditors containing preferences, was convicted under Code 368 for receiving among the assets of C. & Co. a certain boiler and engine, with the knowledge that C. & Co. had, before making the assignment, promised to give the makers thereof a lien for a balance of the purchase price. On a case reserved:—Held, per Townsend, J., (McDonald, C. J., concurring, Ritchie, J., dubitante). "There is nothing in our law to prevent a debtor from assigning all his property to a trustee for the benefit of his creditors, even though he make such preferences as will practically cut out all but those preferred from getting any benefit. It may be fraudulent and void under the Statute of Elizabeth, and yet not amount to the offence created by this section. I do not think on such evidence even C. & Co. could be rightly convicted. It evidently contemplates such an abstraction, or doing away with property, as, if carried out, would completely rob the creditors, or any of them, of any benefit whatever. At least, I think we should so construe a statute, making that an offence which borders so closely upon civil rights and remedies. It is perhaps somewhat difficult to draw the line precisely—to say exactly where, and under what circumstances, fraudulent dealing with property becomes an offence under this statute, but I feel justified in arriving at this conclusion, that an assignment to a trustee, even with preferences, where the property has been handed over to the trustee in accordance therewith, is not a violation of it, even if made by the debtor in breach of prior agreements to prefer other creditors." (Note—Decided April 14th, 1895). Per Henry, J., Graham, E. J., concurring, that the conviction was bad as based on the promise to give security, because no mere non-performance or breach of a promise constitutes a fraud. Also, becoming a party to a breach of the Statute of Elizabeth, creates liability under Code 368. Quære, might not the complaining creditor have followed his right to a lien against the assignee; or might he have succeeded in an action to have the assignment set aside as fraudulent under the Statute of Elizabeth? Regina v. Shaw, 31 N. S. R. 534.

6. **Theft** — Conviction of an Accessor Before the Fact — For Receiving — Code Sec. 61.]—It is well established that one who is a principal in a theft, cannot be convicted of receiving, upon evidence merely of acts constituting him a principal offender, since the offence of theft must be complete before that of receiving can be committed. However, sec. 61 of the Can. Crim. Code which now makes acts which formerly constituted an accessory before the fact, a principal offence, has not the effect of making that doctrine applicable. Sub-sec. 2 of sec. 61 is directed to offences committed in the prosecution of a common purpose which accessories might reasonably contemplate as likely to flow from the carrying out of that purpose. It does not make the subsequent receipt form part of the prior theft, though contemplated and intended to follow it. When therefore the accused is not an aider and abettor of a principal in the second degree, in the commission of the theft, but has only counselled and procured the theft, and his connection is only that of an accessory before the fact, he may be convicted for the substantive offence of receiving, as there is nothing inconsistent in being an accessory before the fact to a theft, and the receiver of the stolen goods afterwards. R. v. Hodge, 2 C. C. C. 350, 12 Man. L. R. 319.

RECOGNISANCE.

1. **Bond** — Form of — Omission of Word "Personally" — Defect.]—The omission of the word "personally" on a recognizance entered into pursuant to sec. 880 (c) Crim. Code, which section requires that the appellant's bond shall be conditioned that he 'personally appear' at the court and abide judgment, is fatal, and appeal dismissed. Ex Parte Sprague, 8 C. C. C. 109, 36 N. B. R. 213.

2. **Crown Rules (1886) Ont.** — Bond Taken Before Justice in Another County.]—A recognizance given under Crown Rules (1886) Ont. to prosecute certiorari proceedings is defective if

taken before a justice of another county than that in which the conviction is made. REX v. JOHNSON, 8 C. C. C. 123, 7 O. L. R. 525.

3. **Discharge of** — JURISDICTION.]—An order discharging a forfeited recognizance under sec. 922, part LIX. of the Code is a civil proceeding, and such order must be made by the court en banc, a single Judge having no jurisdiction to make it. RE MCARTHUR'S BAIL, 3 C. C. C. 195, 2 Terr. L. R. 413.

4. **Estreat** — NOTICE.]—A recognizance was entered into by the defendant and his surety before a stipendiary magistrate conditioned to keep the peace and to appear before the magistrate on a day named. The defendant failed to appear, and the recognizance was estreated without notice to the defendant or his surety. Held :— per Graham, E.J., McDonald, C. J., concurring, following Regina v. Creelman, 25 N. S. Reps. 404, that notice was necessary, and that the order estreating the recognizance was improperly made : — Held, otherwise, per Townshend, J., and Meagher, J., following the dissenting opinion in Regina v. Creelman, Regina v. Brooke, 11 Times L. R. 163, referred to and distinguished. Crown Rules, 84, 86, and 87, and Criminal Code, ss. 916-922, discussed. REX v. BARRETT, 36 N. S. Reps. 135.

5. **Estreat of** — DEFAMATORY LIBEL.]—Where a defendant was convicted by a jury of defamatory libel, and the verdict was recorded, and the offender was, by order of the Court, released on bail to appear for judgment,it is only upon motion of the Crown in the Province of Ontario, that the recognizance of the defendant and his bail is estreated, or that judgment is moved against the offender. REX v. YOUNG, 4 C. C. C. 580, 2 O.L. R. 228.

6. **Estreating.**]—In order to estreat a recognizance taken under Dominion Act, 1869, c. 30, all that is required is a certificate from the proper officer (under sec. 45 of the Act) that it is forfeited; upon that a rule nisi is taken out on affidavit of the facts, and if no cause is shown judgment follows, but without costs. Practice in the Queen v. Thompson, 1 Thom., 9, affirmed. QUEEN v. HICKMAN, 3 R. & C. N. S. R. 255.

7. **Estreating Recognizances** — CROWN RULES.]—C. having failed to appear when called to answer a charge under the criminal law of Canada, his recognizances were declared forfeited, and an order passed estreating the same. No notice was given to the sureties as required by Rev. Stat. Can., c. 179, s. 12, and Crown Rules (1889) 84 and 86 (Code 919) :—Held, setting aside the order, that the Crown Rules apply to recognizances taken under the Criminal Procedure Act, and must be complied with. Also, the passing of those Rules was within the powers of the Judges under the enabling legislation of the Parliament of Canada. REGINA v. CREELMAN, 25 N. S. R. 404.

8. **Marked Cheque** — CRIM. CODE SEC. 900, SUB.-SEC. 4.]—A marked cheque is not a compliance with Crim. Code sec. 900, s.-s. 4, and the Crown Rules (B. C.) which require the appellant in every instance to enter into a recognizance to prosecute an appeal. REX v. GEISER, 5 C. C. C. 154, 8 B. C. R. 169.

9. **Notice to Surety upon Estreating of.**]—The provisions of the Code supersede Nova Scotia Crown Rule No. 86 respecting notice to the sureties upon an application to estreat a recognizance furnished upon a remand at a preliminary enquiry, and no notice ot the sureties of an application to estreat is necessary, per Townshend, J., and Meagher, J. A surety is entitled to notice before a estreating a recognizance and an ex parte order estreating the recognizance should not be set aside. RE FREDERICK BARRETT'S BAIL, 7 C. C. C. 1.

10. **Practice on Entering Judgment** — Judgment will be entered on a recognizance against both principal and sureties where the principal has not appeared in accordance with the condition of such recognizance; and where a rule nisi for such judgment has been served on the sureties, and the principal has left the Province, and they have failed to show cause. QUEEN v. CUDIHEY, 1 Old. N. S. R. 701.

11. **Practice on Entering Judgment.**]—In this case an affidavit was obtained from the clerk of the Crown of the fact of a recognizance having been entered into by the defendants, of the signature of the Justices of Peace thereto, and its return into the Supreme Court, and the non-

appearance of the party to plead to the indictment. On this affidavit a rule nisi was obtained, a copy of which together with a copy of the affidavit was served on each of the defendants. By 1st R. S., c. 169, s. 17, the justice on taking bail is required to give notice in writing to the party accused, of the time and place of trial. This had not been done. The question was, whether that clause of the Act was merely directory, or whether it should be considered as a condition. Per Haliburton, C. J., As there appears to be no settled practice relative to these escheats here, I can see no objection to the proceedings taken on the part of the Crown. Rule Absolute. QUEEN v. THOMPSON, 2 Thom. N. S. R. 9.

12. **Requisites of an Appeal from Summary Conviction.**]—An appeal is not a common law right and the conditions imposed by statute must be strictly complied with. Where the recognizance was only given with one surety instead of two sufficient sureties as prescribed, the appeal was quashed. REGINA v. JOSEPH ET AL, 4 C. C. C. 126, Q. R. 21 S. C. 211.

13. **Sciere Facias on Recognizance.**]—A proceeding by sci. fa. on a recognizance to keep the peace is a civil, not a criminal, proceeding. REGINA v. SHIPMAN, 6 L. J. 19.

14. **Sufficiency of Sureties on Appeal from Summary Conviction.**]—It is not a condition precedent to the right of appeal from a summary conviction that an affidavit of justification by the sureties to the recognizance should accompany the recognizance, the question of the sufficiency of the sureties is a matter entirely for the justice before whom the recognizance is entered into. CRAGG v. LAMARSH, 4 C. C. C. 246, Can. Ann. Dig. 1900.

15. **Summary Conviction** — SURETIES — TIME — STATUTORY REQUISITES A CONDITION PRECEDENT TO RIGHT OF APPEAL — CODE SEC. 879.]—An appeal is not a common law right. It is an exceptional provision enacted by statute and to be availed of, the conditions imposed by the statute must be strictly complied with, as they are all conditions precedent. The appellants were convicted of having unlawfully affixed a trade mark, the conviction was on the 4th October, 1900. Notice of appeal was given on October 10th under Code sec. 879. It was not till December 11th following that they entered into a recognizance and furnished only one surety :—Held, the security was insufficient, nor was it furnished within time. R. v. JOSEPH, 6 C. C. C. 144, Q. R. 21 S. C. 211.

16. **Suspended Sentence** — ESTREATING RECOGNIZANCE — LOCUS STANDI.]—The defendant was in 1887 convicted of libel, and released from custody upon entering into a recognizance with sureties to appear and receive judgment when called upon. The private prosecutor obtained a rule nisi calling on the defendant to show cause why he should not be ordered to appear at the next assizes to receive judgment, on the ground that he had failed to be of good behaviour since entering into the recognizance, by reason of his having published further libels :—Held, that it is only upon motion of the Crown in such cases that the recognizance of the defendant and his bail are estreated, or judgment moved against the offender :—Held, also, that, apart from this, under the circumstances, the prosecutor must be left to his remedy by action or indictment against the defendant in regard to the libels complained of. REX v. YOUNG, 21 Occ. N. 463, 2 O. L. R. 228.

17. **To Keep Peace** — JURISDICTION OF STIPENDIARY — CODE SEC. 958-9.]—A magistrate has jurisdiction to order persons tried before him to give a recognizance to keep the peace (1) Under sec. 958 of the Code for any term not exceeding two years when sitting under part LV. providing for summary trials of indictable offences, or (2) for a term not exceeding twelve months when making summary convictions, or (3) as a conservator of the peace, for the same term, when acting under sec. 959. In the last two cases the magistrate is clothed with the same jurisdiction as a justice only, and therefore to sustain a recognizance covering a period of two years it must show on its face by recital or otherwise that the magistrate was proceeding under sec. 958. When the ordinary form XXX. was used, it must be presumed he was acting under the powers given to justices of the peace, and a period of two years is therefore in excess of his jurisdiction. RE SARAH SMITH, 6 C. C. C. 416.

18. **When to be Given on Appeal from Summary Conviction.**]—A recognizance must be entered into before the appeal is lodged for trial on an appeal under the B. C. Summary Convictions Act to the county court from a summary conviction. REGINA v. KING, 4 C. C. C. 128, 7 B. C. R. 401.

See also BAIL — PRACTICE AND PROCEDURE.

RECORDS.

1. **Clerk of the Peace** — RIGHT TO INSPECT RECORDS.]—Every one interested has a right to inspect the records of the county general sessions (Ont.) and a mandamus will lie to enforce that right. REX v. SCULLY, 5 C. C. C. 1, 2 O. L. R. 315.

2. **Criminal Court Records** — RIGHT OF INSPECTION — 'PERSON AFFECTED'.]—R. S. O. 1894, ch. 334, sec. 11 gives any person affected by any record the right to examine same. The prisoner being charged with receiving certain property knowing it to be stolen, it was held that he had a right to inspect the records of the proceedings which resulted in the conviction of certain persons for stealing the property the prisoner was alleged to have received, and that he was a person affected. RE CHANTLER, 8 C. C. C. 245, 8 O. L. R. 111.

3. **Publicity of Records** — MANDAMUS WILL LIE TO COMPEL CERTIFIED COPIES OF RECORDS OF GENERAL SESSIONS.]—Defendant was indicted for stealing, at the general sessions, and was acquitted. He applied for a certified copy of the indictment and was refused for not having the fiat of the Attorney-General :—Held, that it is the right of a person who has been acquitted of an offence to have the judgment in his favour duly entered up by the proper officer upon application for that purpose; and to obtain an exemplification of such judgment if necessary for the purpose of proving his acquittal. It is foreign to our principles of law, that the right of one subject to pursue a civil remedy against another (action for malicious prosecution) shall depend upon the permission of a Crown official; that the fiat of the Attorney-General was not necessary :—Held, further, that a mandamus would lie to compel the clerk of the peace to give an exemplification or certified copy thereof. ATTORNEY-GENERAL v. SCULLY, 6 C. C. C. 167, 2 O. L. R. 315.

4. **Records of the Court** — PROCEEDINGS ON THE FILES OF THE COURT — POWER TO QUASH — CERTIORARI.]—The mere fact that the proceedings in a summary conviction are on the files of the court, having been brought there on habeas corpus proceedings, does not empower the court to quash them, but a writ of certiorari must issue to remove them into the court. REX v. MACDONALD (No. 2) 5 C. C. C. 279.

5. **Records of the Court** — CERTIORARI — RULE AS TO REMISSION TO INFERIOR COURT.]—The general rule that when a record of an inferior court is brought into a superior court by certiorari it cannot be sent back. But where it appears that the defendant had not good cause for removing it, and also where it appears from the return that the court above could not administer the same justice as the court below, and a failure of justice would ensue, the record will be returned. REGINA v. ZICKRICK, 5 C. C. C. 380, 11 Man. L. R. 452.

RES GESTAE.

1. **Indictment for Assault** — STATEMENT OF ACCUSED AT TIME OF ALLEGED OFFENCE.]—On an indictment for assault, evidence of alleged statements of a witness for prosecution at preliminary hearing relative to what the accused said at the time of the assault is admissible as constituting part of the res gestae. REGINA v. TROOP, 2 C. C. C. 20, 30 N. R. S. 339.

2. **Proof of Witness Contradicting Former Testimony** — SECONDARY EVIDENCE.]—Defendant was arrested, tried and convicted of an assault causing bodily harm on S., but execution of sentence was respited, pending determination of a question reserved. At the trial defendant sought to prove by one who was present at the preliminary hearing before a magistrate, that one of the principal witnesses for the prosecution had then given evidence at variance with his evidence now given, as to conversation between the principals

which led up to the assault; which mode of proof the trial Judge refused to permit. The depositions taken by the magistrate had been lost :—Held, ordering a new trial, per Henry, J., (Graham, E. J., concurring), and Townshend, J., that the evidence should have been admitted on proof that the deposition was lost, not as secondary evidence of the deposition, but as a substituted mode of proof of what the witness had said. Per Ritchie, J. (McDonald, C. J., concurring), that the testimony might be given under Code 700, without reference to the deposition. Also, that the evidence sought to be introduced was part of the res gestae. REGINA v. TROOP, 30 N. S. R. 339.

See also EVIDENCE — PROOF.

RES JUDICATA.

1. **Autrefois Acquit** — PLEA OF — PERSONATION — CODE SEC. 7-933.]—The prisoner had been indicted for personation at a Dominion Election; he was also indicted for perjury. He was tried and acquitted on the first charge; the charge of perjury was traversed at the Spring Assize Court, and on the trial he was found guilty :—Held, on a reserved case, 1. Where a man is indicted for an offence and acquitted, he cannot be again indicted for the same offence, if the first indictment were such that he could be lawfully convicted on it. It is not necessary that the two offences should be expressly or by name the same in both indictments. If the offence in the first indictment is a lower one and is included in that set out in the second indictment, or if it be a higher one and includes the offence set forth in the second indictment, the plea of autrefois acquit must be given effect to. 2. The plea of autrefois acquit is not made out to a charge of perjury in swearing the oath as to identity prescribed by the Dominion Elections Act 1900, by producing a record of acquittal on a previous charge of personation in regard to the same matter. 3. In such a case it cannot be said the second offence includes the first; on a charge of perjury the jury could not bring in a verdict of guilty personation. 4. In such a case, the Crown case depended upon the evidence that the same person committed both crimes; but the acquittal on the first charge having established that it was not the accused who committed the personation, it became res judicata as between the Crown and the accused. R. v. QUINN, 10 C. C. C. 412.

2. **Certiorari** — STATED CASE — APPEAL TO COURT IN BANC.]—Defendant was convicted for an infraction of the Indian Act and obtained a stated case under sec. 900 of the Code, on the hearing of which the conviction was affirmed. Application was then made for a rule nisi returnable before the court in banc, to quash the conviction. The rule was granted and on its hearing before the full court it was held, That the application was in effect an appeal from a single Judge upon a case stated, and no such appeal is contemplated by the provisions of the Code; that the grounds of the motion were the same as on the stated case, and were therefore res judicata. REGINA v. MONAGHAN, 2 C. C. C. 488, 5 Terr. L. R. 495.

3. **Search Warrant** — JUDGMENT IN REM.]—A judgment quashing a search warrant issued by a magistrate under the Canada Temperance Act is not a judgment in rem in respect to the liquors seized, and is not res judicata as to an officer executing such warrant, where he was neither a party nor privy to the proceedings in which the judgment was rendered. SLEETH v. HURLBERT, 3 C. C. C. 197, 25 S. C. R. 620.

REMAND.

1. **Jurisdiction of Justice.**]—A justice has no jurisdiction on a preliminary enquiry to remand an accused person for eight days without having the accused brought before him. RE SARAULT, 9 C. C. C. 448.

2. **Warrant Necessary for when More than Three Clear Days.**]—A remand for more than three clear days upon a preliminary enquiry without the form prescribed in the Code is unlawful and such a remand is an irregularity not to be cured by the application of sec. 578 of the Code to the effect that "no defect in substance or form shall affect the validity of the warrant." THE QUEEN v. HOLLEY, 4 C. C. C. 510.

See also CERTIORARI — CONVICTION — HABEAS CORPUS — JUSTICE OF THE PEACE — PRELIMINARY ENQUIRY.

RIGHT OF REPLY.

1. **Right of Reply** — Crown Counsel has the right of reply even where the accused does not call evidence. R. v. KING, 9 C. C. C. 426, 1 W. L. R. 348, 576.

2. **Right of** — ADDRESS TO JURY — SEC. 661.]—Prisoner's counsel has the right of last address to the jury, where no evidence is called for the defence. The right of reply referred to in Code sec. 661 as being allowed to the prosecution means a right to again address the jury at the close of the evidence. REGINA v. LE BLANC, 6 C. C. C. 348, 29 C. L. J. 729.

RESERVED CASE.

1. **Crown Case Reserved** — ACADEMIC QUESTIONS.]—The Court of Appeal should not be asked, by a reserved case, to solve questions on which the validity of a conviction does not necessarily depend. REX v. WOODS, 23 Occ. N. 220, 6 O. L. R. 41, 2 O. W. R. 338.

2. **Crown Case Reserved** — ACQUITTAL — CASE RESERVED AT INSTANCE OF CROWN — INSANITY.]—The defendant was indicted for theft under s. 305 (a) of the Criminal Code. The act of theft was admitted, but it was contended that there was evidence of insanity at the time the act was committed. The trial Judge charged the jury that there was no such evidence, and that the case did not come within s. 736 of the Code. The jury having found the prisoner not guilty, two questions were reserved for the opinion of the court : 1. Whether there was evidence of insanity as required by s. 736. 2. If not, whether there should be a new trial. The court was moved to quash the case reserved, on the ground that where there had been an acquittal the Crown could not have a case reserved or an appeal :—Held, that the motion must be dismissed, and the reserved case proceeded with, to ascertain whether there was evidence of insanity sufficient in law for submission to the jury. REX v. PHINNEY, (No. 1), 36 N. S. Reps. 264.

3. **Crown Case Reserved** — APPLICATION FOR — GROUNDS — MISAPPREHENSION OF JURORS — STATEMENTS BY.]—It is no ground for stating a reserved case, after a trial and conviction, that two of the jurors who joined in the verdict of guilty did so under a misapprehension; and it is contrary to principle to allow the statements of jurors, even under oath, to be used for the purpose of an application for a reserved case. REX v. MULLEN, 23 Occ. N. 169, 5 O. L. R. 373, 2 O. W. R. 181.

4. **Crown Case Reserved** — FORM OF CHARGE — THEFT — COUNTY COURT JUDGE'S CRIMINAL COURT — COURT IN BANCO — JURISDICTION OF QUORUM.]—The Supreme Court of Nova Scotia, composed of a quorum of four Judges only, has jurisdiction to hear and decide a Crown case reserved stated by the Judge of a county court sitting in his criminal court. The prisoner was charged with unlawfully stealing goods, but the charge did not allege that the offence was committed fraudulently, and without colour of right :—Held, affirming the decision appealed from, that the offence of which the prisoner was accused was sufficiently stated in the charge. GEORGE v. THE KING, 35 S. C. R. 376.

5. **Crown Case Reserved** — JURISDICTION — QUESTION OF FACT — GAMING]—The court of King's bench, sitting as a court for the hearing of cases reserved by criminal courts, has jurisdiction only to pronounce upon a question of law. under facts proved, and mentioned in the reserved case. Consequently, where the question stated in the reserved case was whether the use of a particular apparatus constituted a mixed game of chance and skill, or only a game of skill and did not submit the question whether, under facts proved, and stated in the reserved case, the game was one which came within the prohibition of the Criminal Code, the court declared that it was without jurisdiction in the matter. REX v. FORTIER, Q. R. 13 K. B. 308.

6. **Crown Case Reserved** — LEAVE TO APPEAL.]—Where there has been an acquittal, the trial Judge should leave the prosecutor to apply for leave to appeal, rather than reserve a case. REX v. KARN, 23 Occ. N. 219, 5 O. L. R. 704, 2 O. W. R. 335. REX v. JAMES, 23 Occ. N. 220, 6 O. L. R. 35, 2 O. W. R. 342.

7. **Crown Case Reserved** — NO TRIAL.] —The accused was a letter carrier, and, being suspected of retaining letters containing money, a fictitious one was prepared, which, it was alleged, was afterwards found in his possession. He was arrested, and after a preliminary inquiry was committed for trial. At the trial counsel for the accused contended that the charge laid was not founded on the evidence adduced at the preliminary trial, inasmuch as the proof then taken did not shew that the document stolen was a post-letter which had been deposited in the post office, within the meaning of the amendment to the Post Office Act, 52 V. c. 20, s. 2, s.-s. 1, or of s. 326 (c) of the Criminal Code. The trial did not take place, but the trial Judge reserved the questions thus raised for the opinion of the court :—Held, that a question of law can only be reserved when there has been a trial and conviction. REX v. TREPANIER, 21 Occ. N. 248, Q. R. 10 Q. B. 175.

8. **Crown Case Reserved** — POWER OF MAGISTRATE.]—The prisoner, with his own consent, was tried summarily before the stipendiary magistrate for the city of Halifax, under s. 786 of the Criminal Code, and was convicted of stealing property of the value of less than $10. At the trial, the magistrate, at the request of the prisoner, reserved a question for the opinion of the court, under s. 742 and following sections of the Code :—Held, that under s. 742 and following sections a reserved case can be stated only by a court, or a Judge having jurisdiction in criminal cases, or by a magistrate in proceedings under s. 785 :—Held, that, as s. 785 had no applications to the case in question, and the provisions of s. 900 of the Code had, admittedly, not been complied with, there was no proper case before the court upon which the court had authority to give an opinion. REGINA v. HAWES, 33 N. S. Reps. 389.

9. **Crown Case Reserved** — WEIGHT OF EVIDENCE — ACQUITTAL OF PRISONER — INSANITY.]—The prisoner was indicted for theft and was acquitted on the ground of insanity :—Held, following R. v. McIntyre, 31 N. S. Reps. 422, that the trial Judge cannot reserve a case depending upon the weight of evidence, and that the question reserved, whether there was evidence of insanity as required by s. 736 of the Code, was within the principle decided; that the question of the weight of evidence is entirely for the jury; and that the provision for granting a new trial, where the verdict is against the weight of evidence, cannot be invoked on the part of the Crown. REX v. PHINNEY, (No. 2), 36 N. S. Reps. 288.

See also APPEAL — STATED CASE.

REVENUE ACT.

1. **Revenue Act** — OPERATION.]—The Revenue Act, 15 Vict. c. 28, s. 68, enacted that any penalty or forfeiture inflicted under that Act should be recovered by action of debt or information; section 72 enacted that if any person should assault any revenue officer in the exercise of his office, he should on conviction, pay a fine not exceeding 100 pounds sterling, nor less than 50 pounds sterling, which fine should be paid to the Provincial Treasurer; and in case of non-payment, the offender should be imprisoned for a term not exceeding twelve months, at the discretion of the court. Held, that the Act only limited the discretion of the court as to the amount of fine and imprisonment on conviction for an assault under section 72, but did not alter the ordinary mode of proceedings by indictment. REGINA v. WALSH, 3 All. N. B. R. 54.

See also INLAND REVENUE.

RIOT.

1 **Assault.**]—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, 6 C. P. 372.

2. **Firing at Rioters.**]—A procession having been attacked by rioters, the prisoner, one of the processionists, and in no way connected with the rioters, was proved 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 anyone 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. REGINA v. CORCORAN, 26 C. P. 134.

RULE NISI.

See CERTIORARI — HABEAS CORPUS — MANDAMUS — PROHIBITION.

SALE OF LIQUOR.

1. **Prohibited Hours** — EVIDENCE OF ACCUSED AS TO PREVIOUS OFFENCES.]—Where the defendant was convicted on a charge as a third offence of having sold liquor during prohibited hours, upon his admitting on cross-examination that he had been convicted for two previous offences of a similar nature, it was held that the provisions of section 101 of the Ontario Liquor License Act imperatively require that the accused shall first be found guilty of the subsequent offence before being asked whether he was so previously convicted as alleged in the information. REX v. DEALTRY, 7 C. C. C. 443, 40 C. L. J. 38.

2. **Right of Witness to Refuse to Answer Questions.**] — A witness other than the defendant, or the husband or wife of the defendant, may lawfully refuse to answer a question, where such answer would tend to subject the witness to a prosecution under the Ontario Liquor License Act. Re ASKWITH, 3 C. C. C. 78, 31 O. R. 150.

3. **Treaty Half-breed** — MENS REA.]—The supplying of intoxicants to a half-breed, who had "taken treaty" and thereby came under the scope of the Indian Act, is not an offence against the Indian Act where the licensee had no reason to think or suspect that the half-breed had "taken treaty." REGINA v. MELLON, 7 C. C. C. 179, 5 Terr. L. R. 301, 22 Occ. N. 343.

See INTOXICATING LIQUORS — LIQUOR LICENSE.

SCHOOL TEACHER.

1. **Excess of Punishment** — MALICE OR PERMANENT INJURY — CRIM. CODE SEC. 55.]—A school teacher is criminally responsible for an excess of punishment to a pupil, though inflicted without malice and causing no permanent injury. REX v. GAUL, 8 C. C. C. 178, 36 N. S. R. 504, 24 Occ. N. 135.

2. **Punishment of Pupil** — DEGREE OF CORRECTION.]—The powers which the law grants to school masters with respect to the correction of their pupils is analogous to that which belongs to parents and the authority of the teacher is regarded as a delegation of parental authority. There is no particular rule as to the nature of the punishment which may be inflicted, provided it is moderate and reasonable and not out of proportion to the offence. THE QUEEN v. ROBINSON, 7 C. C. C. 52.

SEAMEN.

1. **Harboring Deserting Seamen** — DISTINCTION BETWEEN IMPERIAL MERCHANT SHIPPING ACT AND CANADIAN SEAMEN'S ACT.]—Section 236 of the Imperial Merchant Shipping Act, 1894, only applies in cases where the ships from where the desertion of seamen has taken place are British ships, and when they have been duly registered as such, while the provisions of section 104 of the Canadian Seamen's Act apply to any and all ships whatever their nationality may be, and whether they have been registered or not. REGINA v. O'DEA, 5 C. C. C. 402, 9 Q. Q. B. 158.

2. **Harboring Deserting Seamen** — CONVICTION FOR, VALID UNDER SEAMEN'S ACT OF CANADA.]—The Imperial Merchant Shipping Act is confirmatory of the Seamen's Act of Canada, and where neither the information nor the conviction mentioned the specified statute under which proceedings had been taken on a charge of wilfully harboring and securing seamen, such conviction for an offence committed

on Canadian soil by a Canadian resident was held to be valid under the Seamen's Act of Canada. REGINA v. O'DEA, 3 C. C. C. 402, 9 Q. Q. B. 158.

SEARCH WARRANT.

1. **Canada Temperance Act** — ACCURACY OF DESCRIPTION.]—A search warrant under the Canada Temperance Act, c. 106, R. S. C., sec. 108, and the amending Act, 51 Vict. (1888), c. 34, does not impose a necessity of describing the premises to be searched by metes and bounds. SLEETH v. HURLBERT, 3 C. C. C. 197, 25 S. C. R. 620.

2. **Issued by Justice Acting for Magistrate** — DEFECT IN DESIGNATION OF JUSTICE — INVALIDITY OF.]—A search warrant signed by a justice acting in the illness, or absence, or at the request of a police magistrate should include in its designation of the justice such fact, otherwise the warrant is invalid; a description of the justice as "J. P." is insufficient; and where he is erroneously described as a police magistrate the warrant is void. The law is careful to protect the rights and liberty of the subject, and if a peace officer or any other person invades a house or home without authority he is a trespasser, and the occupant is justified in using force to either eject or prevent him from carrying out what he may claim to be a privilege, but which he has not the proper authority to exercise. REGINA v. LYONS, 2 C. C. C. 218.

3. **Magistrate's Error as to Jurisdiction** — DAMAGES.]—A defendant fairly stating the facts of a case to a magistrate is not liable in damages for the erroneous view of the magistrate that he had jurisdiction to issue a search warrant. PRING v. WYATT, 7 C. C. C. 60, 50 O. L. R. 505, 23 Occ. N. 191.

4. **May Specify Various Suspected Places**]—A search warrant under the Canada Temperance Act may specify the different buildings or premises or places where the liquor is suspected to be, and authorize a search in each and all. SLEETH v. HURLBERT, 3 C. C. C. 197, 25 S. C. R. 620.

5. **Peace Officer** — RIGHT TO SEARCH SUSPECTED PERSON.]—A peace officer has the right to search a person suspected of stealing a post letter where his suspicions are based on reasonable grounds. Action for damages for false arrest, held not maintainable in such a case. MAYER v. VAUGHAN, 6 C. C. C. 68, Q. R. 11 K. B. 340.

SECOND OFFENCE.

1. **Second Offence.**]—A conviction for a second offence for selling liquor contrary to the Canada Temperance Act must show that the second offence was committed after the information had been laid for the first offence. EX PARTE LE BLANC, 1 C. C. C. 12, 33 N. B. .R 90.

2. **Second Offence** — LIQUOR LICENSE ACT (Man.) — PROOF OF PREVIOUS CONVICTION—OPPORTUNITY TO MEET CHARGE] —Upon a prosecution for a second offence under the Liquor License Act (Man.), it is not sufficient to merely put in a certificate of previous conviction. The accused should be given an opportunity of meeting that charge, and the proceedings ought to show either that the accused admitted the previous conviction, or that the fact of such conviction, and the identity of the accused were both proved. REGINA v. HERRELL, 1 C. C. C. 510, 12 Man. L. R. 198, 522.

See also CERTIORARI — CONVICTION — INTOXICATING LIQUORS.

SEDUCTION.

1. **Corroboration** — SEC. 684.]—The defendant had been found guilty by a jury of unlawfully seduced and had illicit connection with a girl under sixteen and over fourteen under sec. 181 of the Code. The trial Judge was of the opinion that sufficient corroboration had been given, because of proof of pregnancy, and that in his opinion it had been "very clearly proven that it was hardly probable, and in fact next to impossible that any other man than the defendant was responsible for it". Evidence was adduced to show that the girl had been a domestic in the service of the defendant; that her courses

were regular before she went into defendant's service, and after she returned home the mother of the girl could not remember her having any. The physician testified in his opinion the pregnancy began subsequent to about the time she entered defendant's employ :—Held, on a case reserved, that there was not sufficient corroborative evidence to satisfy Code sec. 684, and the conviction was quashed. REGINA v. VAHEY, 2 C. C. C. 259.

2. **Crim. Code 182** — 'PREVIOUSLY CHASTE CHARACTER' — PROMISE OF MARRIAGE.]—On an indictment under Crim. Code sec. 182 for seduction under promise or marriage, it was shown that the illicit connection had occurred weekly for over a year before the prosecutrix became pregnant, there also being evidence that on each occasion the promise of marriage was renewed. It was held that the prosecutrix was not a woman of 'previously chaste character'. R. v. LOUGHEED, 8 C. C. C. 184.

3. **Crim. Code 182** — UNDER PROMISE OF MARRIAGE — MEANING OF "UNDER".] —It is not sufficient on a charge of seduction under "promise of marriage" to prove the promise of marriage, and then the seduction during the currency of the promise. It is necessary to show that the seduction was attained by means of a promise of marriage, or that by the promise of marriage the seduction was influenced. REGINA v. WALKER, 5 C. C. C. 465, 1 Terr. L. R. 482.

4. **Evidence Implicating Accused** — CRIM. CODE 684. REGINA v. WYSE, 1 C. C. C. 6, 2 Terr. L. R. 103.

5. **Seduction of Girl under 16** — EVIDENCE—CORROBORATION—FUNCTION OF JUDGE AND JURY.]—In a prosecution under the Criminal Code, s. 181, for the seduction of a girl under 16, in addition to the evidence of the girl, evidence was given by other witnesses to the following effect : —That the accused and the girl were found in a house alone; that the accused came out partly dressed; that he was then leaving sheep (which were in his charge) unattended and refused to go with the witness to where the sheep were; that before he was charged with any offence he stated to the witness "that he had been advised if he could get the girl away and marry her, he would escape punishment" :—Held, that the girl was corroborated in some material particulars by evidence implicating the accused, within the intention of the Criminal Code, s. 684. Semble, that the fact that the accused in giving evidence on his own behalf, stated that he had first had connexion with the girl at a date after she had reached 16, while one of the witnesses for the prosecution stated that the accused, two months before that date, had admitted with reference to the girl that he had "got there," might, though this admission was made after the girl had reached 16, be taken into consideration with the other facts as tending to implicate the accused. Whether there is any corroborative testimony is a question for the Judge, but if there is any such testimony, the sufficiency of it, and the weight to be given it is for the jury, unless of course the corroboration is so slight that it ought not to be left to the jury at all. REGINA v. WYSE, 2 Terr. L. R. 103.

6. **Speedy Trial** — AMENDMENT — ELECTION — SEC. 723-767- 778.]—Accused was indicted for seduction of one R. G., a female over 14 and 16 years of age on the 9th of January, 1905. It transpired at the speedy trial that the accused had had the first illicit connection with R. G. on the third of the same month. Counsel for prosecution applied to amend the indictment to conform to the evidence. Prisoner's counsel objected that it was a new charge and accused should have the privilege of re-election. The right to re-elect was refused. :—Held, that accused should have the opportunity of re-electing. And further the fact of the girl not being of previously chaste character was an answer and a complete defence to the charge. R. v. LACELLE, 10 C. C. C. 231.

7. **"Under Promise of Marriage"** — DIRECTION TO JURY — MIS-TRIAL — NEW TRIAL.]—The meaning of "under promise of marriage" in 50-51 Vic. (1887), c. 48, s. 2, substituting a new section for R. S. C. c. 157, s. 4. means "by means of a promise or marriage." Where therefore the trial Judge directed the jury that the intention of the section was to impose a punishment for the seducing of young women under twenty-one by men over twenty-one to whom they were engaged, and the jury rendered a special verdict as follows :

"The verdict is that the prisoner promised to marry F. S. in June, 1892, with the intention of carrying out his promise but in November of the same year he seduced her, at the same time renewing his promise of marriage, and in our opinion no other man had connection with her" :—Held, that there had been a misdirection and therefore a mis-trial; and a new trial was ordered. THE QUEEN V. WALKER, 1 Terr. 482.

SENTENCE.

1. **Juvenile Offender** — CAN. STAT. 1890, c. 37 — "FAITH".]—Reading 810 with 820, on the conviction of a juvenile offender for theft, and his commitment to an institution, it is not necessary that the conviction should show that he is under the age of 16 years. The fact that the magistrate has proceeded under 810 shows that the magistrate was of opinion that the prisoner was of suitable age, and 820 dispenses with the necessity for his recording his opinion. Acts of Canada, 1890, c. 37, s. 34 (Code 550), allows such a boy of "Protestant faith" on a conviction for an offence rendering him liable to imprisonment, to be committed to the Halifax Industrial School for a period not exceeding five years :—Held, that the matter of "faith" need not be inquired of prior to conviction, as it only concerns the place of imprisonment. REGINA V. HERBERT BRINE, 33 N. S. R. 43.

2. **Plea of Guilty** — FINE OBLIGATORY.] —Where a statute enacts a penalty on the accused being found guilty, the magistrate has no power to suspend sentence on payment of the costs of the prosecution but must impose at least the minimum penalty. REX V. VERDON, 8 C. C. C. 352.

3. **Release on Suspended Sentence** — PREVIOUS CONVICTION — ENQUIRY BY MAGISTRATE — CODE SEC. 694-971.]— 1. The proper time for proving a previous conviction against a prisoner (under sec. 971) is not upon the trial of the offence but after the trial. 2. The magistrate may proceed on his own initiative to an inquiry as to previous convictions. R. V. BONNEVIE, 10 C. C. C. 377.

4. **Sentence to Dorchester for One Year** — DISCHARGE REFUSED.]—A prisoner was convicted of larceny, and sentenced to one year's imprisonment in Dorchester penitentiary. The warden refused to receive him on the ground that the shortest period for which prisoners could be sentenced to or received at the penitentiary was two years. Prisoner was then taken to the county jail. To a rule in the nature of habeas corpus the jailor, in his return, set out the conviction for larceny, and also returned that the prisoner was detained under a warrant of a justice, for attempting to escape by tearing up the floor of his cell, the warrant annexed to the return was under the hand of two justices. The court refused to discharge him, and decided that he should be sentenced to imprisonment in the common jail, for one year, inclusive of the period for which he had already been detained. IN RE RICE, 2 R. & G. N. S. R. 77, 1 C. L. T. 555.

5. **Suspended Sentence** — EFFECT OF — BREACH OF RECOGNIZANCE — DISORDERLY HOUSE — CODE SEC. 971-973.]—Defendant had been convicted of being an inmate of a disorderly house. The magistrate under provisions of Code sec. 971, conditionally released the offender on suspended sentence, she having entered into recognizance for good behaviour. She was subsequently tried for a similar offence, and acquitted. The magistrate then sentenced her under the previous conviction :—Held, that prisoner should be discharged from custody; that the magistrate could only sentence accused on being brought before him on an information properly sworn out, that she had failed to comply with and observe the conditions of the recognizance. REX V. SITEMAN, 6 C. C. C. 224.

6. **Warrant of Commitment.**]—By the Penitentiary Act R. S. C. 182, the time from which a sentence begins to run is the date of passing, and it is therefore unnecessary to have the date mentioned in the warrant of commitment. All that is necessary for an officer at the time of delivering over a convict to the penitentiary is to deliver at the same time a copy of the sentence taken from the minutes of the court and certified by the Judge or clerk, without any further warrant. REX V. SMITHEMAN, 9 C. C. C. 10. SMITHEMAN V. THE KING, 9 C. C. C. 18, 35 Can. S. C. R. 189, 490.

SEPARATE CHARGES.

1. **Verdict must be Rendered at the Conclusion of each.**]—A prisoner was charged under the Speedy Trials Act on four distinct, but similar, charges of theft. At the conclusion of the first, second and third, the Judge of the county court reserved his verdict, until all should have been tried, preferring to hear all the evidence. He then found the prisoner guilty of all four. On a case reserved :—Held, that the convictions were bad. The prisoner was entitled to be tried only, on the evidence given in relation to a particular charge on which he is then indicted, to the exclusion of all extraneous matter which might effect the mind of the Judge. Per Henry, J., because such a course is a departure from immemorial practice for which no authority can be found. REGINA v. MCBERNY, 29 N. S. R. 327.

SHERIFF.

1. **Where Disqualified, Venire can be Directed to Coroner.**]—A venire can be directed to a coroner to summon a new grand jury, where a grand jury has been summoned by a sheriff disqualified by reason of relationship to the prosecutor. REGINA v. MCGUIRE, 4 C. C. C. 12, 34 N. B. R. 430.

See also PUBLIC OFFICIALS.

SLANDER.

1. **Public Slander.**]—Slandering a person in a public restaurant is not an offence under s. 207 of the Criminal Code. MERCIER v. PLAMONDON, Q. R. 20 S. C. 288.

2. **Public Place** — CRIM. CODE SEC. 207.]—Slandering a person in a public restaurant, is not an offence under sec. 207 of the Code, rendering such person a loose idle and disorderly person with sec. 207. If the matter had occurred in the street and the complainant had been a passenger some latitude would be allowed; and being a passenger she would have been held to have been impeded. R. v. MERCIER, 6 C. C. C. 47.

SMUGGLING.

1. **Conviction for** — CUSTOMS ACT SEC. 192.]—A conviction for smuggling under the Customs Act sec. 192 should show that article clandestinely landed in Canada was the subject of duty. REGINA v. THOMAS MCDONALD, 2 C. C. C. 504.

2. **Insufficient Allegation.**]—An indictment for smuggling, under the Rev. Stat. c. 29, charged in several counts : 1st—That the defendant unlawfully landed alcohol, subject to duty, and thereby smuggled the same. 2nd—That defendant unlawfully landed alcohol, subject to duty, without reporting to the Treasurer, and thereby smuggling, etc. 3rd—That the defendant landed the alcohol without a permit, and thereby smuggled, etc. 4th—That the defendant landed alcohol without paying the duties :—Held, 1st—That the indictment was insufficient; as the mere unlawful landing of goods, without alleging any intent to defraud the revenue, did not constitute the offence of smuggling. 2nd—That the landing of goods, without reporting them to the Treasurer, or without obtaining a permit, though it subjected the party to a penalty, did not amount to smuggling. 3rd—That the mere landing of goods without a previous payment of duties is not a breach of the revenue laws. REGINA v. CASSIDY, 4 All. N. B. R. 623.

SOLICITOR.

1. **Canada Temperance Act Sec. 115 (a)** — PREVIOUS CONVICTION — SOLICITOR'S AUTHORITY.]—A solicitor represents his client on the hearing of a charge under the Canada Temperance Act, in order to answer the magistrate's inquiry as to previous convictions, though the accused himself be not present. REX v. O'HEARON, 5 C. C. C. 187.

2. **Service of Notice on, for New Trial.**]—Where an accused had been acquitted of manslaughter, and the Crown served the solicitor, who had acted for the accused at the trial, with a notice of the hearing of a stated case, and no one appeared for the accused at the hearing; it was held that there was a presumption that the authority of the solicitor had ceased with the discharge of

the prisoner from custody, and as the defendant had not been served personally, there was no cause pending which the appellate court could hear. REGINA v. WILLIAMS, 3 C. C. C. 9, 28 O. R. 583.

3. **Statement of to Wife of Accused** — PRIVILEGE.] — Communication between the prisoner's wife and the prisoner's counsel is not a privileged communication in the sense of being a communication from her husband, where no evidence is offered that the husband knew of or authorized it, and a statement by such solicitor to the wife is not privileged where it is calculated to further or conceal a criminal act. GOSSELIN v. THE KING, 7 C. C. C. 139, 33 C. S. C. R. 255.

STATED CASE.

1. **Ontario Summary Convictions Act**— PROCEEDING BY FORM OF APPEAL—CODE SEC. 900.] — Section 900 of the Canada Criminal Code prescribes the practice upon the statement of a case by a magistrate. The internal evidence supplied by this latter section shows that the proceeding by way of stated case is a form of appeal. Under the Ontario Convictions Act R. S. O. 1887 c. 74, all the enactments of the Dominion laws relating to procedure on summary convictions, are incorporated in the provincial law, except that concerning appeals. Hence appeals from convictions under Ontario statutes are to be lodged and prosecuted as provided by the provincial enactment, and are witheld from being subject to Dominion legislation. R. v. ROBERT SIMPSON CO., LTD., 2 C. C. C. 275, 28 O. R. 231.

STATUTES.

1. **Alteration by Statute** — EFFECT OF.] —An offence committed before, though tried after, the Revised Statutes came in force, is not indictable under those statutes, though the words creating the offence are not altered thereby. The forms of indictment in the Schedule to Title XL. of the Revised Statutes are inapplicable to offences not referred to in that title. REGINA v. MCLAUGHLIN, 3 All. N. B. R. 159.

2. **Construction of** — PARLIAMENTARY DEBATES.]—Parliamentary debates are not appropriate sources of information from which to discover the meaning of the language of a statute. GOSSELIN v. THE KING, 7 C. C. C. 139, 33 S. C. R. 255.

3. **Construction of** — 'SALE OR OTHER DISPOSAL' — GENERIC WORDS FOLLOWING SPECIFIC WORDS.]—Where specific words are followed by generic words, the latter are to be understood in their primary and wide meaning, and the words 'other disposal' held to include a gift. REGINA v. WALSH, 1 C. C. C. 109, 29 O. R. 36.

4. **Construction of Word "May".**]— In a statute providing that the court may perform a judicial act for the benefit of a party under certain circumstances, the word "may" is imperative and not discretionary. FENSON v. NEW WESTMINSTER, 5 B. C. R. 624, 2 C. C. C. 52.

5. **Interpretation of** — CERTIORARI RULES.]—Where a statute lays down rules restricting the issue of writs of certiorari they should be construed narrowly, and applicants should be kept to strict observance of them. R. v. BIGELOW, 2 C. C. C. 378, 31 N. S. R. 436.

6. **Interpretation of Penal Statutes** — LIBERTY OF THE SUBJECT.]—Where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning, which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the legislature which has failed to express itself. REGINA v. WIRTH AND REED, 1 C. C. C. 231, 5 B. C. R. 114.

7. **Prohibition** — AGAINST KILLING DEER OUT OF SEASON — EXEMPTION OF RESIDENT FARMER — RESIDENT AGENT OF ABSENT FARMER WITHIN THE EXEMPTION.]—Defendant was convicted under s. 15 of the Game Protection Act, 1895 (B. C.), for having shot certain deer within the period prohibited by the Act. It appeared from the evidence that the defendant resided upon and managed a certain farm as the agent of the owner, who was then absent, and that the deer in question came upon and was depasturing a cultivated field, part of the farm, when the defendant shot and killed it :— Held, that the defendant in committing

the act was within the exemption created by s. 16 of the Act, providing: "16. Nothing in this Act shall be construed as prohibiting any resident farmer from killing at any time deer that he finds depasturing within the cultivated fields." Observations upon the equitable construction of statutes. REG. v. SYMINGTON, 4 B. C. R. 323.

8. **Province** — GAME OBTAINED OUTSIDE PROVINCE — PROVINCIAL STATUTE.] —Where a provincial statute prohibits the possession with intent to deport, etc., of game, etc., the provision is applicable to game, etc., obtained from places beyond the Province, and the words do not themselves import any restriction of its applicability. REGINA v. STRAUSS, 1 C. C. C. 103, 5 B. C. R. 486.

9. **Provincial Statute** — CRIMINAL LAW OR CIVIL RIGHTS ULTRA VIRES.]—An Act which constitutes a new crime for the purpose of punishing it in the interests of public morality falls within the criminal law and is ultra vires a Provincial legislature, but an act which imposes a punishment to protect one class by regulating its dealings and rights with another class falls within property and civil rights and is intra vires a Provincial legislature. REGINA v. HALIFAX ELECTRIC TRAMWAY CO., 1 C. C. C. 424, 30 N. S. R. 469.

10. **Provincial Statutes** — QUERY, IF DEALING WITH CRIMINAL LAW — WHETHER ULTRA VIRES. 6 B. C. R. 78.

11. **Statute Creating Defence** — EXCESS OF ENACTMENT — CONSTRUCTION OF STATUTES GIVING COSTS IN PENAL PROCEEDINGS.]—A statute giving costs in penal proceedings is to be construed strictly, as such costs are an increment of the penalty and the construction most beneficial to the offenders must be adopted. EX PARTE LON KAI LONG, 1 C. C. C. 120.

12. **Statute Creating Offence** — EXEMPTION FROM — PROVISO OR EXCEPTION — NEGATIVING GAME PROTECTION ACT, 1895 — OPERATION AS TO IMPORTED SKINS.]— The existence of an exception nominated in the description of an offence created by statute, must be negatived in order to maintain the charge, but if a statute creates an offence in general 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. The generality of the prohibition contained in the statute (s. 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. REGINA v. STRAUSS, 5 B. C. R. 486.

See also CONSTITUTIONAL LAW.

STATUTE OF LIMITATIONS.

1. **Adulterous Intercourse** — DAMAGES.] —The Statute of Limitations is not a bar to an action for criminal conversation where the adulterous intercourse between defendant and plaintiff's wife has continued to a period within six years from the time the action is brought. Judgment appealed from (27 Ont. App. r. 703) affirmed. Quære, does the statute only begin to run when the adulterous intercourse ceases, or is the plaintiff entitled to damages for intercourse within the six years preceding the action? KING v. BAILEY, 31 S. C. R. 338.

2. **Time Limit for Indictable and Summary Offences.**]—Section 841 of the Can. Crim. Code as to limitation of time within which an information may be laid "in case of any offence punishable on Summary Conviction", applies only to cases arising, and in which proceeds are had under the provisions regarding summary convictions. Proceedings may be taken in the prosecution of an indictable offence (e. g. Assault) notwithstanding the case may be one triable summarily before a magistrate, had an information been laid within the time limited in section 841 of the Code, and though such time limit has expired, since the purpose of the limitation of the Statute for trial of summary offences was not to absolve from crime, but was to limit the time within which the accused might be tried and punished, deprived of the right of trial by jury. On an indictment for rape, the accused may be found guilty of the lesser charge of assault, under section 713 of the Code, and a conviction therein is good even though the time limit of six months has

expired, since section 841 has no application to anything other than summary proceedings. R. v. EDWARDS, 2 C. C. C. 96, 29 O. R. 451.

STATUTORY DECLARATION.

1. **Liability of Each of Joint Declarants.**]—Where the words "We", "We know", are used in a statutory declaration, there is no ambiguity, and the declaration is the act of each of those who deliberately signed the same, and solemnly declared to the facts contained in it. REGINA v. SKELTON, 4 C. C. C. 467, 18 C. L. T. 205.

STIPENDIARY MAGISTRATE.

See JUSTICE OF THE PEACE.

STREET RAILWAYS.

1. **Fenders** — INDICTMENT WILL LIE FOR NEGLECT OF REASONABLE PRECAUTIONS.]—An indictment for maintaining a common nuisance will lie against a street railway company under a legal duty to use reasonable precautions against endangering human life, in operating its cars on a public highway, where there is an omission to provide proper fenders to avoid danger to human life. REGINA v. TORONTO RAILWAY COMPANY, 4 C. C. C. 4.

2. **Indictment Against for Breach of Legal Duty.**]—A street railway can be indicted for maintaining a nuisance where it is under a legal duty, in operating its cars on a public highway, to use reasonable precautions against endangering human life, where such reasonable precautions are neglected or omitted. REGINA v. TORONTO RAILWAY CO., 4 C. C. C. 4.

3. **Nuisance.**]—A corporation may be properly convicted of committing a common nuisance by making a practice of running street cars reversely on a section of track which is used by cars running in the opposite direction, where no fender, light or gong is used on the rear of said cars, thereby endangering the safety of the public. R. v. TORONTO RY. CO., 10 C. C. C. 106.

STREETS AND HIGHWAYS.

1. **Indictment of Street Railway Co. for Common Nuisance.**]—A Street Railway Co. under a legal duty to use reasonable precautions to avoid danger to human life, in operating its cars on the public highway, can be indicted for maintaining a common nuisance, where such reasonable precautions are omitted or neglected. REGINA v. TORONTO STREET RAILWAY CO., 4 C. C. C. 4.

2. **Nuisance** — NON-REPAIR BY CORPORATION — ORDER OF COURT — COSTS.]—The defendant was guilty of indictment of suffering a street to remain out of repair. The trial Judge made an order that the nuisance be abated by a certain date at a cost of the defendant corporation. The order was neglected and on a subsequent motion that the sheriff be directed to repair it, the road was subsequently repaired before hearing the said last motion :—Held, that the motion was properly made and costs should be allowed against defendants. R. v. PORTAGE LA PRAIRIE, 10 C. C. C. 125.

3. **Obstructing of Cabs.**]—Where a valid contract between a hotel proprietor and the defendant under which carriages were lawfully engaged, being retained at a nominal charge for the guests of the hotel, was proven, it was held that the defendant could not be convicted of a breach of a by-law requiring cabs and express wagons when not engaged to stand only on certain specified streets. R. v. MAHER, 10 C. C. C. 25.

4. **Obstruction of** — RELIGIOUS MEETING — COMMON LAW RIGHT TO FREE PASSAGE.]—The defendants were officers of the Salvation Army, and by holding an open air meeting, had effected a blockade of the street. They were convicted for violation of the Towns' Incorporation Act of Nova Scotia :—Held, that the public has a common law right to free passage upon a highway, and the peaceable purpose of the gathering obstructing the highway does not affect this right, and the defendants were properly convicted for standing in a group or near to each other on a street so as to obstruct free passage. R. v. WATSON ET AL., 6 C. C. C. 331

5. **Obstruction of Street** — EXHIBITION IN SHOP WINDOW — NUISANCE.]—A by-law of the city of Montreal enacted that no person should employ any device, noise or performance, tending to the collection of persons on the streets or sidewalks, or to the obstruction of the same, for any purpose whatever, without permission of the mayor. The defendant had advertised that a marriage would be celebrated in his shop window and a crowd gathered around :—Held, that the defendant was properly convicted under the by-law. WORKMAN v. CITY OF MONTREAL, 10 C. C. C. 121.

6. **Obstruction of** — STUDENTS MARCHING IN PROCESSION.]—The defendant was one of a body of sixty students marching in a procession on the sidewalk, and was convicted under provisions of a local by-law, for obstructing a free passage for foot passengers :—Held, on appeal, that a conviction under the by-law could be properly entered against any one of the number notwithstanding that sufficient space was left for foot passengers to pass by in single file. R. v. YATES, 6 C. C. C. 282.

SUBPOENA.

1. **Gratuitous Issue of** — MOTION FOR — AFFIDAVIT IN SUPPORT — R. S. QUEBEC, 2614.]—Article 2614 of the Revised Statutes of Quebec permits the court to order that subpoenas for witnesses necessary for the defence, be issued at the expense of the Crown, when the defendant states by affidavit that he is poor and needy. The affidavit in support should allege only that the witnesses required are necessary, and that the defendant is poor and needy. If, however, particular facts are alleged which the witnesses are to prove, the Judge in granting the motion would seem to prejudge the question of admissibility of the evidence thus stated, and this the court will not do. The statute gives this privilege to a defendant only in cases of offences which were felonies prior to the Criminal Code. R. v. GRENIER, 2 C. C. C. 204.

2. It is not necessary that there should be fifteen days between the teste and return of a subpoena on a criminal information, where the venue is laid in the home district. REGINA v. CROOKS, E. T. 3 Vict. (Ont.).

SUMMONS.

1. **Defective Service of** — WAIVED BY APPEARANCE OF DEFENDANT'S COUNSEL.] —Any defect in the service of a summons to appear before a stipendiary magistrate, to answer a charge of unlawfully keeping intoxicating liquor for sale contrary to the provisions of the second part of the Canada Temperance Act, is waived when the defendant appears by counsel, even when objection is taken to the proceedings, and where an adjournment was taken after the case was closed and judgment was pronounced subsequently in the absence of the defendant's counsel convicting the defendant, the defendant was held to have been properly convicted notwithstanding his absence. REGINA v. DOHERTY, 3 C. C. C. 505, 32 N. S. R. 235.

2. **Judicial Act** — ISSUE OF SUMMONS CONSTITUTES A.— Section 559 of the Criminal Code, read in connection with sec. 843, shows that the issue of a summons in relation to an offence punishable summarily, as well as an indictable offence, is a Judicial Act. REGINA v. ETTINGER, 3 C. C. C. 387, 32 N. S. R. 176.

3. **Service** — OF SUMMONS ON CORPORATIONS.]—A summons may be served on a corporation in a similar manner to service of notice of indictment as provided by Code sec. 637. R. v. TORONTO RAILWAY CO., 2 C. C. C. 471, 26 A. R. 491.

4. **Substitutional Service of.**]—Upon the substitutional service of a magistrate's summons it must be shown that an effort was made to serve the defendant personally, and that the service was upon an adult inmate of the defendant's last or most usual place of abode. Where either of these requisites of a substantial service has been omitted, the defect cannot be remedied by supplemental evidence. RE BARRON, 4 C. C. C. 465.

SUNDAY.

1. **British North America Act** — PROVINCIAL STATUTE — ULTRA VIRES — 'CRIMINAL LAW' OR 'PROPERTY' AND CIVIL RIGHTS.]—An amendment to a Provincial Statute extending the provisions of a statute which makes it an offence to do servile labour on the 'Lord's Day', re-

lates to the criminal law, and not to property and civil rights, and is ultra vires of a Provincial Legislature. REGINA v. HALIFAX ELECTRIC TRAMWAY CO., 1 C. C. C. 424, 30 N. S. R. 469.

2. **By-law Regulating the Sale of Liquors** — UNREASONABLENESS.]—Montreal by-law No. 281 prohibiting the sale on Sunday of everything except "fruits, cigars, confectionery and temperance beverages", and these also by any trader who did not carry on such business or trade, held, invalid, as being unreasonable and arbitrary permitting of the sale of tobacco in cigars but not in other form, and restricting the sale to certain favoured persons. CITY OF MONTREAL v. FORTIER, 6 C. C. C. 340.

3. **By-law and Provincial By-Law.**]—A municipal by-law exceeding the Provincial Law by including in its scope classes not included in the latter is void as being too wide in its scope, and unreasonable. REGINA v. PETERSKY, 1 C. C. C. 91, 5 B. C. R. 549.

4. **Evidence on Appeal** — SUNDAY.]—Held, following Eggington's case, 2 E. & B. 717, and Re Bailey, 3 E. & B. 607, that the affidavit of the prisoner was receivable in evidence to show that the investigation and commitment had taken place on a Sunday. REGINA v. CAVELIER, 11 Man. L. R. 333.

5. **Judicial Proceedings on** — PRELIMINARY INQUIRY.]—The holding of a preliminary inquiry before a magistrate on Sunday, is a judicial proceeding, and is illegal, section 729 of the Crim. Code dealing only with matters before a jury. REGINA v. CAVELIER, 1 C. C. C. 134, 11 Man. L. R. 333.

6. **Lord's Day Act** — CAB-DRIVER.]—A cab-driver is not within any of the classes of persons enumerated in s. 1 of the Lord's Day Act, R. S. O. 1887, c. 203, and cannot be lawfully convicted thereunder for driving a cab on Sunday. REGINA v. SOMERS, 24 O. R. 244.

7. **Lord's Day Act** — FOREMAN OF RAILWAY ELEVATOR.]—The defendant was convicted of following his ordinary calling of foreman of the Grand Trunk Railway Company elevator in superintending the unloading of grain from a vessel into the elevator on Sunday :—Held, that R. S. O. 1897, c. 246 does not apply to that railway, and as it did not apply to the employer it did not apply to the employee. Conviction quashed, with costs against the prosecutor. REGINA v. Reed, 30 O. R. 732.

8. **Lord's Day Act** — SELLING ICE CREAM — WORK OF NECESSITY.]—It is lawful for an eating house keeper to carry on his ordinary business on the Lord's Day as a work of necessity, though the Lord's Day Act of Ontario does not contain the proviso of 29 Charles II., ch. 7, respecting inns, cook shops or victualling houses, and there is no offence where an eating-house keeper supplies ice cream as a refreshment in the nature of a light meal in the ordinary course of his business. REGINA v. ALBERTIE, 3 C. C. C. 356, 20 Occ. N. 123.

9. **Lord's Day Act**—NEWS-DEALER.]—Held, a news-dealer was a tradesman within the Statute C. S. U. C. Cap. 104, sec. 1. R. v. ANDERSON, 10 C. C. C. 144.

10. **Sunday Closing** — BARBER SHOP — BY-LAW EXCEEDING LEGISLATIVE AUTHORITY.]—Where the legislature has authorized a municipal council to pass a by-law prohibiting the opening of barber shops on Sunday, the by-law in declaring that no barber shall exercise his trade or calling on that day, exceeds the powers conferred by the statute. RE LAMBERT, 4 C. C. C. 533, 7 B. C. R. 396.

11. **Sunday Closing** — SUFFICIENCY OF EVIDENCE.]—The admission of an accused barber that he had shaved customers on Sunday is not sufficient to warrant a conviction for keeping his barber shop open on that day upon an information under a by-law prohibiting the opening of barber shops on Sunday. RE LAMBERT, 4 C. C. C. 533, 7 B. C. R. 396.

12. **Sunday Observance** — FARMER DOING FARM WORK — EJUSDEM GENERIS.]—The conviction of a farmer for driving pegs on his farm for a fence on Sunday was quashed on the ground that the words "or other persons whatsoever" in section 1 of the Lord's Day Ordinance (N. W. T.), are applicable only to persons who are ejusdem generis, with those specifically

named in the preceding part of the sentence, and a farmer engaged in farm work is not brought within the provisions of the Ordinance. REX v. HAMREN, 7 C. C. C. 188, 5 Terr. L. R. 400.

13. **Sunday Observance** — SALE OF ICE CREAM — VICTUALLING HOUSE LICENSE.]—The defendant carried on the business of a candy and ice cream store, but had obtained a victualling house license, and ice cream was sold by his clerk on Sundays. The court being convinced that the license had been obtained in order to give color of right to sell ice cream on Sunday, conviction was upheld. REX v. SABINE, 8 C. C. C. 70.

14. **Right of Province to Prevent Profanation of Lord's Day.**]—Held, that the Lord's Day Act 62 Vict. c. 11, (N. B.) prohibiting the sale of property, whether real or personal, on Sunday was intra vires, and that in respect to a large number of subjects generally accepted as falling under the denomination of police regulations over which the Provincial Legislatures have control within their territorial limits, still these subjects may be legislated upon by the Federal Parliament for the Dominion at large. RE GREENE, 4 C. C. C. 182, 35 N. B. R. 137.

15. **Sunday Observance** — SALE OF ICE CREAM]—Under the Lord's Day Act (Ont.) no person can on the Lord's Day exercise his ordinary calling except in conveying travellers or the mail, in selling drugs and medicines, or in performing other works of necessity. The feeding of people in a victualling house is a work or necessity; and as incidental to this ice cream may be lawfully sold on Sunday. But such a sale would be prohibited by the Act where bona fide meals are not supplied in the same place. R. v. STINSON, 10 C. C. C. 16.

16. **Sunday Observance** — STATUTES IN PARI MATERIA — CONSTRUCTION OF.]—The Act of 29 Charles II., ch. 7, is an Act in pari materia with the Lord's Day Act of Ontario, and such acts are to be taken together as forming one system, and interpreting and enforcing each other. REGINA v. ALBERTIE, 3 C. C. C. 356, 20 Occ. N. 123.

17. **Ultra Vires of Ontario Legislature.**]—Upon appeal to the Judicial Committee of the Privy Council it was held that the Revised Statutes of Ontario, 1897, ch. 246, intituled "An Act to prevent the profanation of the Lord's Day," treated as a whole was beyond the competency of the Ontario Legislature to enact. ATTORNEY-GENERAL v. HAMILTON RAILWAY CO., 7 C. C. C. 326, (1903) A. C. 524.

SUPREME COURT OF CANADA.

See APPEAL.

SURETY.

1. **Finding Sureties to Keep Peace** — COSTS.]—The costs of finding sureties to keep the peace under sec. 959 and 870 of the Crim. Code, give authority and procedure for imposing and collecting such costs. But the defendant can be imprisoned only in default of distress for non-payment; an order therefore awarding imprisonment without distress is ultra vires. R. v. POWER, 6 C. C. C. 378.

See also BAIL — RECOGNIZANCE.

SUSPENSION OF CIVIL ACTION.

1. **Felony.**]—The rule which prevents a civil remedy being taken whilst the prosecution for the felony which is the foundation for the action is not concluded does not apply where the Crown and not a private person is the plaintiff. REGINA v. REIFFENSTEIN, 5 P. R. 175.

2. **Felony.**]—Under the Temperance Act of 1864, where the deceased had been assaulted and killed by a person who became intoxicated by drinking to excess in defendant's inn, it was held that the legal representative might maintain an action under C. S. C., c. 78, before prosecution for felony. MCCURDY v. SWIFT, 17 C. P. 126.

3. **Felony** — FOREIGN COUNTRY.]—To an action on promissory notes the defence was that they were given to procure the withdrawal of a charge of felony which the plaintiff had made against the defendant in Utah territory in the United

States. Per Wilson, J., the plaintiff would not have been bound first to take criminal proceedings for the felony before suing here on the notes, the suspension of the civil remedy being a matter of purely local policy. TOPONCE v. MARTIN, 38 U. C. R. 411.

TELEGRAM.

1. **Arrest** — LEGALITY OF ARREST ON TELEGRAM.]—An officer is justified in arresting a person accused of obtaining goods under false pretences, on a telegram from another Province. REGINA v. CLOUTIER, 2 C. C. C. 43.

THEFT.

1. **Accessory to Theft** — RECEIVER OF STOLEN GOODS.]—Although under sec. 61 of the Crim. Code, a person who has been accessory to a theft may be convicted as a principal thief, this does not prevent his conviction as a receiver of the stolen property, if he has subsequently received it from the actual thief. The true principle is, that it is a receipt which is merely an act done in the commission of the theft which cannot be treated as a separate offence; and the statute which makes counselling or procuring form a participation in the offence, when committed, does not also make a subsequent receipt form a part of a theft completed before the receipt. REGINA v. HODGE, 12 Man. L. R. 319.

2. **Action for Money Taken.** —Right of action to recover money robbed from plaintiff by defendant, and the expenses of prosecuting defendant. See PETIT v. MILLS, 12 C. L. J. 224.

3. **Agent** — TERMS ON WHICH RECEIVED — CRIM. CODE SEC. 308.]—It is not necessary on a charge of theft by agent, to prove that the principal imposed any terms as to accounting for or paying the same to the principal. The reference in section 308 (2) Crim. Code to the terms on which the defendant holds the money when he has received it. REGINA v. UNGER, 5 C. C. C. 270.

4. **Aiding and Abetting** — ACCESSORY TO THE FACT — SEC. 61.]—In order to be an aider and abettor, it is not necessary that the person who participates in an offence should be present during the commission of some incident constituting the offence; it is sufficient that he aids and abets while a part of the criminal transaction is taking place, either at its commencement, or during its progression, or later, but proximately at its consummation, or while some act is being done which may enter into the offence though it might be consummated without it. In case of theft, the act of carrying away the stolen property may be continued until it is lodged in a place of safe keeping, to be afterwards appropriated to the thief's use; and though the actual taking may be complete as a crime, the carrying the property to a place of safe keeping may enter into the criminal transaction and constitute a continuation of its commission. Anyone, therefore, who knowingly assists a thief to conceal stolen property which he is in the actual or proximate act of carrying away, renders aid to the principal actor, and becomes an accessory to the fact, and can be dealt with as a principal under sec. 61 of the Code. R. v. CAMPBELL, 2 C. C. C. 357.

5. **Cattle Stealing** — N. W. T. ACT SEC. 66 — CRIM. CODE SEC. 331.]—The N. W. T. Act sec. 66 provides that where the charge is (inter alia) theft, and the property does not exceed $200 in value, the charge may be heard in a summary way without the intervention of a jury, and sec. 67 of the same Act provides that where the person is charged with any other criminal offence the same shall be tried by a Judge with the intervention of a jury of six :—Held, that the nature of the offence, and value of property stolen were the only matters to be considered in ascertaining whether the charge was with in sec. 66, though the punishment be greater than may be awarded on a conviction for stealing certain other classes of property. REGINA v. PACHAL, 5 C. C. C. 34, 4 Terr. L. R. 310.

6. **Charging Crime** — SUFFICIENCY OF CHARGE — "UNLAWFULLY DID STEAL".]—The prisoner was summarily tried on the charge that he on a certain day "unlawfully did steal one piece of Oregon pine wood, of the value of $5.40, the property of His Majesty the King." The

prisoner having been convicted, a case was reserved as to whether the charge on which he was tried was bad by reason of the omission to charge the offence as having been committed "fraudulently and without color of right" :—Held, Weatherbe, J., dissenting, that the words "unlawfully did steal" in the charge, meant and included everything necessary to constitute the offence of stealing as defined by s. 305 of the Code, and that the conviction, so far as this question was concerned, was right. REX v. GEORGE, 35 N. S. Reps. 42.

7. **Clerk Selling Goods** — NO ENTRIES — PRIVATE ARRANGEMENT.]—A clerk in charge of a branch store obtained supplies from the factory of his employers, and arranged with the checker that no entries be made as to the delivery of the same, and delivered same to a customer still making no charges or entries relating thereto, the defence being that he had so acted to give the customer longer credit by delaying the charging, and so retaining his trade. It was held that the prisoner had taken the goods without color of right with intent to deprive the owner absolutely thereof, and the accused had been properly convicted. REX v. CLARK, 5 C. C. C. 235.

8. **Conductor of Train taking Money from Passengers and Allowing Free Transportation** — JURISDICTION OF JUSTICES — CONVICTION — SUSPENDED SENTENCE — COSTS. —REX v. MCLENNAN (N. W. T.), 2 W. L. R. 227.

9. **Conversion of Goods Found a Question for Jury.** —Whether or not the conversion by the finder to his own use of goods found by him is a theft, is a question of fact for the jury upon consideration of all the circumstances. REGINA v. SLAVIN, 7 C. C. C. 175, 35 N. B. R. 388.

10. **Conversion** — MISDIRECTION] —The mere fact of a person converting to his own use goods found by him does not of itself as a matter of law make him guilty of theft. The jury after retiring asked the question, "Does raising a temporary loan on anything found constitute theft ?" and the Judge answered "Yes" :—Held, that the answer was equivalent to a direction that as a matter of law the accused was guilty, and was a misdirection. REGINA v. SLAVIN, 35 N. B. Reps. 388.

11. **Conviction for** — WEIGHT OF EVIDENCE — NEW TRIAL.]—Where an accused was convicted by a jury on the charge of stealing cattle, a new trial will not be granted merely upon the trial Judge's expression of dissatisfaction with the verdict. The question is whether the verdict is one that the jury as reasonable men would properly find. REGINA v. BREWSTER, 4 C. C. C. 34.

12. **County Judge's Criminal Court** — POWER TO IMPRISON — INDICTMENT.]—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, 8 P. R. 16.

13. **Credit Given by Bank is not a Thing Capable of being Stolen**] —The offence of obtaining by false pretences is not committed where the false pretence practised does not, at once, obtain money, but merely a credit in account, although such credit might eventually bring money; but that, although a transaction by which a person, by false pretences, obtains a credit in account does not constitute the substantive offence of obtaining money by false pretences, it may constitute a criminal attempt to get, by false pretences, the money which the credit may ultimately bring. REGINA v. BOYD, 4 C. C. C. 219.

14. **Crim. Code Sec. 305-356** — NO AVERMENT OF TAKING "FRAUDULENTLY AND WITHOUT COLOR OF RIGHT, ETC.".]—The words "unlawfully did steal" in a charge of theft preferred under the Speedy Trials clauses, mean and include everything necessary to constitute the offence of theft or stealing as defined by sec. 305 Crim. Code, and it is unnecessary to state it was done "fraudulently and without color of right," etc. REX v. ARTHUR GEORGE, 5 C. C. C. 469.

15. **Differentiated from Receiving Stolen Goods.**]—The commission of the offence of theft does not include the offence of receiving stolen goods, and upon a charge of housebreaking, and theft a conviction, whatever may be the proof, cannot be rendered under the provisions of section 713 for the offence of receiving stolen goods. REGINA v. LAMOUREUX, 4 C. C. C. 101.

16. **Discharge of Accused at Preliminary Inquiry** — SUBSEQUENT COMMITTAL BY SAME MAGISTRATES — INDICTMENT — VALIDITY — DEPOSITIONS AT FIRST INQUIRY NOT BEFORE GRAND JURY.—REX v. HANNAY (B. C.), 2 W. L. R. 543.

17. **Evidence of Ownership of Article Stolen** — BRAND — EARMARK — DEPOSITION TAKEN AT PRELIMINARY ENQUIRY — READING OF, IN EVIDENCE AT TRIAL — EVIDENCE OF ABSENCE OF DEPONENT FROM CANADA — SUFFICIENCY OF.]—Held, (Rouleau, J., dissenting), that the production of a steer's hide with the prosecutor's brand and ear-marks 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, was sufficient to justify the trial Judge in finding that the steer in question was the property of the prosecutor. (See now 63-64 Vic. (1900), c. 46, s. 707 A, and 1 Edw. VII., c. 42, s. 707A.) :—Held, per curiam, that evidence that a witness at the preliminary enquiry was a corporal in the N. W. M. Police, that he had been sworn in as a member of Strathcona's Horse, 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, if he had left the latter force he would have returned to such post, 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 the deposition of such witness taken at the preliminary enquiry; and that the question was one to be decided by the trial Judge. THE QUEEN v. FORSYTHE, 4 Terr. L. R. 398.

18. **Evidence of Ownership of Article Stolen** — BRAND.]—The production of a steer's hide with the prosecutor's brand and ear-marks 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 was sufficient to justify the trial Judge in finding that the steer in question was the property of the prosecutor. (See now Crim. Code 707A.). REGINA v. FORSYTHE, 5 C. C. C. 475, 4 Terr. L. R. 398.

19. **Evidence** — ONUS.]—On a charge of theft of goods from a store, evidence of the finding in the prisoner's house of the goods and of keys fitting the store doors, and of the fact that the goods were in the store exposed for sale at the time of the alleged theft and had not been sold, is sufficient to put the onus upon the prisoner of accounting for his possession. In such circumstances, it is not necessary for the Crown to prove that the goods had not passed from the possession of the owners by some means other than sale. REX v. THERIAULT, 11 B. C. R. 117.

20. **Evidence of Similar Acts Showing Design.**]—On a charge of theft the mere fact that the evidence adduced tends to shew the commission of other similar acts does not render it inadmissible if it be relevant to the issue and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental. THE QUEEN v. COLLYNS, 4 C. C. C. 572.

21. **Evidence of Former Offence** — ACQUITTAL — JUDGE'S CHARGE.—REX v. MENARD, 2 O. W. R. 900.

22. **Extradition** — ON CHARGE OF — CRIM. CODE SEC. 305.]—Notwithstanding the change of name of the offence of larceny, to theft or stealing under the Canada Criminal Code, it is nevertheless an extradition offence. RE GROSS, 2 C. C. C. 67, 25 A. R. 83.

23. **Finder of Goods** — MIS-DIRECTION.] — A Judge's instruction to the jury that the raising of a temporary loan on anything found constitutes theft, was equivalent to a direction that as a matter of law the accused was guilty, and was a mis-direction being a finding by the Judge rather than the jury. REGINA v. SLAVIN, 7 C. C. C. 175, 35 N. B. R. 388.

24. **Fraudulent Removal** — PERSON CONCEALING HIS OWN GOODS — CRIM. CODE SEC. 354.]—The words "anything

capable of being stolen" in sec. 354, Crim. Code, do not mean anything capable of being stolen by the accused, but this section refers to, and includes any thing which comes within the definition given in sec. 303 Crim. Code. It is an offence under sec. 354 Crim. Code to fraudulently conceal one's own goods for the purpose of obtaining insurance money thereon and it is not necessary to prove that the fraudulent purpose was accomplished. REGINA v. GOLDSTAUB, 5 C. C. C. 357.

25. **From Person** — INGREDIENTS OF OFFENCE.]—Upon a charge of theft from the person, where the evidence amounts to mere suspicion, and the material ingredients essential to establish the guilt of the accused were wanting, a conviction upon such evidence will be quashed on appeal. REGINA v. WINSLOW, 3 C. C. C. 215.

26. **Goods under Seizure** — TAKING AWAY WITHOUT AUTHORITY — HOTEL-KEEPER — LIEN FOR BOARD AND LODGING — NECESSITY FOR TENDER — "LAWFUL SEIZURE AND DETENTION — RECENT POSSESSION AS EVIDENCE OF STEALING — CRIMINAL CODE. 306.]—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 detention," 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 section 306 of the Criminal Code. (But see now section substituted by 63 Vic. 1900, c. 46, s. 3, schd). 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 section 306 of the Criminal Code. 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. Circumstantial evidence of theft. THE QUEEN v. HOLLINGSWORTH, 4 Terr. L. R. 168.

27. **Having in Possession Goods Stolen Abroad** — PROOF OF FOREIGN LAW.]—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. Per Taylor, C. J., 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 he had 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 Killam, 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. REGINA v. JEWELL, 6 Man. L. R. 460.

28. **Hotel Keeper's Lien** — GUEST TAKING GOODS DETAINED BY PROPRIETOR — CRIM. CODE SEC. 306.]—The common law lien of an hotel keeper on the goods of a guest for a board and lodging bill is not waived by allowing the guest to enter and take certain specified articles only; nor is it vitiated by claiming too much, where a proper tender could have been made by the guest of the correct amount; and such goods so held and detained are under "lawful seizure and detention" within the meaning of Code sec. 306, and a guest taking such goods away without authority may be legally convicted of the offence of theft. REGINA v. HOLLINGSWORTH, 2 C. C. C. 291.

29. **Inability to Furnish Items.**]—Where the Crown is unable to furnish particulars of any specific amounts that the defendant received and misappropriated, and the prosecution was based on the defendant's admissions and balance sheets, an order to furnish such particulars will not be made, but the Crown should indicate before the trial the statements of accounts made by the prisoner which it proposes to put in evidence, with full particulars of these statements. REX v. STEVENS, 8 C. C. C. 387.

30. **Insanity** — RESERVED CASE ON APPLICATION OF CROWN— CODE SEC. 736-744.]—The accused was acquitted by the jury on the ground of insanity in the

face of the Judge's instructions that there was no evidence of insanity. The trial Judge at the instance of the Crown reviewed the points (1) Was there any evidence of insanity, (2) If not, should there be a new trial? Counsel for accused moved to quash the reserved case, on the ground that where there has been an acquittal, the Crown cannot have a reserved case or an appeal :—Held, at common law no further proceedings could have been taken; but under the Code 743 any question of law might be reserved, and the question reserved being a question of law, it is competent for the Crown to have it reserved notwithstanding the acquittal. R. v. PHINNEY, 6 C. C. C. 469.

31. **Intent** — SECURING POSSESION OF GOODS BY MENACES.]—Although the demanding and obtaining the possession of goods from a debtor by a creditor through menaces and threats that the debtor would be arrested, is reprehensible, where resorted to for the purpose of obtaining and holding the goods as security for a debt actually owing by the debtor to the creditor, yet there is no "intent to steal" within the meaning of section 404 of the Crim. Code, and a conviction entered in such a case, even where the threat of arrest was made without any honest belief that the debtor was liable to arrest, will be set aside. Neither does the securing possession of goods in such case constitute stealing or theft, within the meaning of sec. 305 of the Crim. Code, since being taken for security for a debt, it is done with a colour of right. REGINA v. LYON, 2 C. C. C. 242.

32. **Juvenile Offender** — IMPRISONMENT — WARRANT OF COMMITMENT — DEFECT — AMENDMENT — DISCHARGE.]—The defendant was detained under a warrant of commitment from a magistrate, for the offence of fraudulently and without colour of right taking and converting to his own use one stove of the value of $5, the property of one W., with intent to deprive said W. absolutely of the said stove. A return to an order in the nature of a habeas corpus made under R. S. N. S., c. 181, shewed that the prisoner was detained under a warrant of commitment made the 9th January, 1903, a copy of which was annexed and that he came into the custody of the keeper of the home, under said warrant, on said last mentioned day, and was detained on said warrant until the 22nd January, 1903, when, being still in custody, the magistrate caused to be delivered to the keeper of the home a certain other warrant of commitment, under which the prisoner had been detained ever since :—Held, ordering the discharge of the prisoner, that the return to the order was bad, because neither it nor the second commitment showed that the magistrate intended to amend the first warrant, or substitute the second one for it. In re Elmy v. Sawyer, 1 A. & E. 843, followed. REX v. VENOT, 23 Occ. N. 71.

33. **Juvenile Offender** — PLACE OF IMPRISONMENT — DURATION OF SENTENCE — DISCHARGE — ORDER FOR FURTHER DETENTION — CIRCUMSTANCES.]—The defendant, a youth of over 17 years of age, was charged before a magistrate with stealing a small sum of money out of the contribution box of a church. The magistrate's return shewed that the defendant pleaded guilty, and was committed for two years to the Provincial Reformatory. He was taken to the Reformatory and sent on to the Central Prison and kept there in custody under the warrant of commitment to the Reformatory. On a motion for his discharge on the return of a habeas corpus :—Held, that there had been a miscarriage of legal directions in sending a lad of over 17 years of age to the Reformatory and in sending him on a sentence of two years to the Central Prison :—Held, also, that s. 785, of the Criminal Code is intended to comprehend summary trial "in certain other cases" than those enumerated in s. 783 (a), and that when the offence is charged, and in reality falls under s. 783 (a) it is to be treated as a comparatively petty offence with the extreme limit of incarceration fixed at six months under s. 787 :—Held, also, that, under the circumstances, this was not a case for further detention or the direction of further proceedings under s. 752; and an order for the defendant's discharge was granted. REX v. HAYWARD, 23 Occ. N. 48, 5 O. L. R. 65, 1 O. W. R. 799.

34. **Larceny Act.** — R. S. C., c. 164—UNLAWFULLY OBTAINING PROPERTY — BREACH OF TRUST.]—It is no ground of objection to a conviction under sec. 85 of the Larceny Act, R. S. C., c. 164 for unlawfully obtaining property, that the prisoner might on the evidence, have been

convicted under sec. 65 of criminal breach of trust. REGINA v. MCINTOSH, 5 C. C. C. 254, 22 S. C. R. 180.

35. **Larceny** — AGENT.]—The prisoner, being the agent of the American Express Company, in the State of Illinois, received a sum of money which had been collected by them for a customer, and put it into their safe, but made no entry in their books, of its receipt, as it was his duty to do, and afterwards absconded with it to this Province, where he was arrested :—Held, that he was guilty of larceny, and was properly convicted here under 32 & 33 Vict., c. 31, s. 112 (D.). REGINA v. HENNESSY, 35 U. C. R. 603.

36. **Larceny**—ATTEMPT.]—The prisoner was convicted of unlawfully stealing 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 to 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., c. 18, s. 9, was properly convicted. REGINA v. ESMONDE, 26 U. C. R. 152.

37. **Larceny** — CARRIER — NON-DELIVERY OF MONEY.]—In an action against a carrier for non-delivery of a package of money, defendant pleaded not guilty. The plaintiff's 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 the money :—Held, that this evidence sufficiently shewed a felony, as defendant upon it might, as a bailee, be properly convicted of larceny, under C. S. C. c. 92, s. 55; and a nonsuit was ordered. LIVINGSTONE v. MASSEY, 23 U. C. R. 156.

38. **Larceny** — MONEY.] — Upon an indictment for stealing money, the property of certain persons (composing the firm of the American Express Company) it appeared that the agent of the company in St. Mary's delivered two parcels containing $888, 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 quarter sessions 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 :—Held, 1. that the inquiry 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. 2. 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 therefore was properly laid in the indictment. 3. That if the undertaking was to deliver the money to E. & S. the prisoner was the agent of the company for that purpose. 4. 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. REGINA v. MASSEY, 13 C. P. 484.

39. **Larceny** — CRIMINAL BREACH OF TRUST.]—A conviction under s. 85 of the Larceny Act, R. S. C., c. 164, for unlawfully obtaining property, is good, though the prisoner, according to the evidence, might have been convicted of a criminal breach of trust under s. 65. Two bills of indictment were presented against A. and B. under ss. 85 and 83 of the Larceny Act. By the first count each was charged with having unlawfully and with intent to defraud taken and appropriated to his own use $7,000 belonging to the heirs of C., so as to deprive them of their beneficiary interest in the same. The second charged B. (the appellant) with unlawfully receiving the $7.000, the property of the heirs which had before then been unlawfully obtained and taken and appropriated by said A., the taking and receiving being a misdemeanour under s. 85, c. 164, R. S. C., at the time when he so received the money. A., who was the executor of C's. estate, and was the custodian of the money, pleaded guilty to the charge on the first count B. pleaded not guilty, was acquitted of the charge on the first count, but was

found guilty of unlawfully receiving. Held, that whether A. was a bailee or trustee, and whether the unlawful appropriation by A. took place by the handing over of the money to B., or previously, B. was properly convicted under s. 85, c. 164, R. S. C., of receiving it knowing it to have been unlawfully obtained. McIntosh v. The Queen, 23 S. C. R. 180.

40. **Larceny** — Defective Specification.]—The prisoner was convicted of larceny, after trial under The Speedy Trial Act. The warrant on which he was tried set out "that he did feloniously, break into the factory of R. T. and did steal, take, and carry away (certain goods) of the value of $20." On a case reserved : —Held, that the conviction was bad by reason of the omission of the word "feloniously" in connection with the stealing, etc., the offence for which he was convicted. Per Ritchie, J., dissenting, that it was not necessary to use the word "feloniously" twice, as the charge should be considered one count. Regina v. Inglis, 25 N. S. R. 259.

41. **Larceny** — Evidence.]—On an indictment for stealing cooper's tools on the 5th 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 of larceny. Regina v. Starr, 40 U. C. R. 268.

42. **Larceny** — Evidence.] — Held, that the prisoner was properly convicted, on the evidence set out in the report, of the larceny of certain articles connected with a mill which he had rented from the prosecutor, and that in the manner in which the case was reserved, the only question for the court was, whether in any view of the evidence the prisoner could have been found guilty. Regina v. Stewart, 43 U. C. R. 574.

43. **Larceny** — Excessive Penalty — Amendment.]—The defendant was prosecuted for stealing $5 in money, the property of one J. M., contrary to the form of the statute, &c., and the charge was heard and determined in a summary way by a police magistrate :—Held, that the prosecution fell under s. 783 (a) of the Criminal Code, the value of the property being less than $10, and it not being charged that the offence was "stealing from the person"; and therefore s. 787 applied and the magistrate had no power to impose a penalty of imprisonment for longer than six months. The provisions of the Code respecting amendments to summary conviction do not apply to summary trials and the provisions of s. 800 do not apply where the same infirmity is found in the conviction as in the commitment. The conviction and commitment were bad for imposing an authorized penalty; the defendant was entitled to be discharged upon habeas corpus; and an order should not be made under s. 752 for his further detention. Regina v. Randolph, 32 O. R. 212.

44. **Larceny** — False Pretences.]— A defendant indicted for misdemeanour in obtaining money under false pretences cannot, under C. S. C., c. 99, s. 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 C. S. U. C., c. 112. s. 3, to direct the verdict to be entered as one of "guilty," without the additional words. Regina v. Ewing, 21 U. C. R. 523.

Held, that defendant, who was indicted for false pretences, could not, on the indictment and evidence in this case, be convicted of larceny, under C. S. C., c. 99, s. 62. Quære, as to the meaning of that clause. Regina v. Bertles, 13 C. P. 607.

45. **Larceny Act, R. S. C., Ch. 164, Sec. 65** — Fraudulent Conversion of Negotiable Securities by Trustee — Letter Shewing Trust — Identity of Instruments Produced with those Mentioned in Letter — Conversion

of Proceeds of Securities — Property Definition of — Sanction of Attorney General — Proof of.]—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 of 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 identified 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 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, showed 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. Regina v. Barnett, 17 O. R. 649.

46. **Larceny from the Person** — Sentence.]—The prisoner consented to be tried, and was tried and convicted, by the police magistrate for a city for stealing a purse containing $3.48 from the person, and was sentenced to three years imprisonment :—Held, upon the return of a habeas corpus, that the offence was an indictable one under s. 344 of the Criminal Code. Whether or not it fell under the provisions of ss. 783 and 787 also, and was punishable by imprisonment for any period up to fourteen years, and the magistrate had jurisdiction by virtue of s. 785. Regina v. Conlin, 29 O. R. 28.

47. **Larceny** — Fruit — Overhanging Branch.]—A party cannot be prosecuted under 4 & 5 Vict., c. 25, for stealing fruit "growing in a garden," unless the bough of the tree upon which the fruit is hanging be within the garden; it is not sufficient that the root of the tree be within the garden. McDonald v. Cameron, 4 U. C. R. 1.

48. **Larceny** — Hiring Horses.]—Defendant hired a pair of horses from a livery stable to go to a particular place, and afterwards absconded with them. The jury found that at first he did not intend to steal, but having accomplished the object of hiring, he then made up his

mind to convert them to his own use :—Held, that he was a bailee, within C. S. C., c. 92, s. 55, and properly convicted on an indictment for larceny in the ordinary form. REGINA v. TWEEDIE, 23 U. C. R. 120.

49. **Larceny** — "INDIAN ACT, 1880," 43 VIC., CH. 28, SEC. 66, (D.)—CONVICTION.]—The prisoner was indicted for larceny under the Indian Act of 1880, 43 Vic., ch. 28, sec. 66 (D.), and was convicted :—Held, Wilson, J., dissenting, that he ought not to have been convicted, because, per Armour, J., the wood the subject of the alleged larceny, was not in the absence of satisfactory information, supported by affidavit, "seized and detained as subject to forfeiture" under the Act; and because, per O'Connor, J., the affidavit required by sec. 64, had not been made, and was a condition precedent to a seizure. Per Wilson, C. J., section 64 cannot apply to trees found by the officer of the department in the act of being removed from the lot on which they have been wrongfully cut, or where there can be no doubt they have been unlawfully cut, for such an application would make it impossible to effect a seizure in such cases. REGINA v. FEARMAN, 10 O. R. 660.

50. **Larceny** — INDICTMENT — FORM.]—An indictment for breaking into a church and stealing vestments, &c., there, describing the goods stolen as the property of "the parishioners of the said church" :—Held, bad. They must be averred to belong to some person or persons individually. Such a defect is not within 18 Vict., c. 92, ss. 25, 26. REGINA v. O'BRIEN, 13 U. C. R. 436.

51. **Larceny** — INDICTMENT — FORM.]—In an indictment charging the prisoner with stealing bank bills, the words "of the moneys, goods, and chattels" may be rejected as surplusage. REGINA v. SAUNDERS, 10 U. C. R. 544.

52. **Larceny Act, R. S. C., Ch. 164** — INFORMATION — HABEAS CORPUS DURING REMAND ON PRELIMINARY INVESTIGATION — BAIL — R. S. C., ch. 174, SEC. 83.]—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 the 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. Held, also, that 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. Held, lastly, that 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 fully 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, 16 O. R. 228.

53. **Larceny** — INDICTMENT — SEVERAL COUNTS.]—Where an indictment contains one count for larceny, and allegation 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. REGINA v. MASON, 22 C. P. 246.

It is not a misjoinder of counts to add 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, or motion to quash the indictment, under 32 & 33 Vict., c. 29, s. 32; and where there has been a demurrer to such allegations, 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 a misjoinder of counts. IB.

An indictment describing an offence within 32 & 33 Vict., c. 21, s. 18, as feloniously stealing an information taken in a police court, is sufficient after verdict. IB.

54. **Larceny** — MONEY VOLUNTARILY HANDED TO PRISONER — INTENT TO STEAL.]—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. REGINA v. EWING, 21 U. C. R. 523.

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.

55. **Larceny** — PLACE OF TRIAL.]—Larceny committed on the high sea, on a voyage from Ireland to St. John, does not come within the 1 Rev. Stat., c. 158, s. 10, relating to the place of trial of offences committed during a voyage, but may be tried under the Act of Parliament, 18 & 19 Vict., c. 91. REGINA v. DILLON, 6 All. N. B. R. 61.

56. **Larceny** — PROOF OF TITLE.]—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 taken, the indictment was amended, by stating the goods to be the property of the mother, and no further evidence of her administrative character was given, the county court Judge holding the evidence of R. M. sufficient, and not leaving any question as to the property to the jury:—On a case reserved, Held, 1. That there was ample evidence of possession in R. M. to support the indictment without amendment. 2. That the Judge had power to amend, under C. S. C., c. 99, s. 78. 3. That the conviction on the amended indictment could not be sustained, there being no evidence of the mother's representative character, nor any question of ownership by her, apart from such character, left to the jury. REGINA v. JACKSON, 19 C. P. 280.

57. **Larceny** — TORONTO POLICE COURT]—Held, that the police court of the city of Toronto is a court of justice, within 32 & 33 Vict., c. 21, s. 18 (D.), and that the prisoner was properly convicted of stealing an information laid in that court. REGINA v. MASON, 22 C. P. 246.

58. **Larceny** — TREES — CORDWOOD.]—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., c. 21, s. 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 a tree" within the statute. REGINA v. CASWELL, 33 U. C. R. 303.

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 of the conviction, that the defendant should pay seventy-five cents for said wood, not being a finding that it was of that value. IB.

Semble, that the conviction sufficiently stated that defendant was in possession of the wood. IB.

59. **Larceny** — UNSTAMPED PROMISSORY NOTE — VALUABLE SECURITY — 32 & 33 Vict., c. 21 (D.) — FORM OF INDICTMENT.]—S. was indicted, tried and convicted for stealing a note for the payment and value of $258.33, the property of A. McC. and another. The evidence shewed that the note was drawn by A. McC. and C. R., and made payable to S's. order and was given by mistake to S., it being supposed that $258.33 was due

to him, instead of $175.00. The mistake being immediately discovered, S. returned the note to the drawers unstamped and unindorsed, in exchange for another note of $175.00, but S. afterwards, on the same day, stole the note, caused it to be stamped, indorsed it, and tried to collect it :—Held, reversing the judgment of the court of Queen's Bench for Lower Canada (appeal side), that S. was not guilty of larceny of "a note" of "of a valuable security," within the meaning of the statute, and that the offence of which he was guilty was not correctly described in the indictment. SCOTT V. THE QUEEN, 2 S. C. R. 349.

60. **Larceny of an Unstamped Promissory Note** — WHETHER VALUABLE SECURITY WITHIN THE MEANING OF THE ACT.]—Held, by Allen, C. J., Duff and King, JJ., (Weldon and Wetmore, JJ., dissenting), That an insufficiently or defectively stamped promissory note, the holder being ignorant of the insufficiency of, or defect in, the stamping, may be the subject of a larceny, as a valuable security under the Act 32 & 33 Vict., c. 21, s. 15. REGINA V. DEWITT, 21 N. B. R. 17.

61. **Mode of, Specified by Statute.**]—When a statute in the same clause which prohibits an offence specifies a special mode of trying the offence, that mode must be employed and no other. REX V. BEAUVAIS, 7 C. C. C. 494.

62. **Necessity of Shewing Legal Title to Money Stolen** — CRIM. CODE 305 AND 319 (a) AND 319 (c).]—To constitute an offence of stealing under Crim. Code secs. 305, 319 (a) or 319 (c) there must be in the person or corporation alleged to be stolen from, a right existing at the time of taking, either to the ownership or to the possession of the property. REGINA V. TESSIER, 5 C. C. C. 73.

63. **Post Letter and Money** — EVIDENCE — CONFESSION — FALSE STATEMENTS — PERSON IN AUTHORITY — DECOY LETTER — "POST LETTER" — ADDRESSES TO JURY — ORDER OF — REPLY — KING'S COUNSEL REPRESENTING ATTORNEY-GENERAL.]—Prisoner convicted for stealing a post letter and of theft of money. At the trial the post office inspector was about to testify with respect to a statement or confession made to him by the prisoner, when counsel for prisoner objected, and was allowed to examine the inspector as to the circumstances in which the statement was made. Upon testimony thus elicited counsel for the prisoner contended that it was shewn that the statement or confession was not admissible, because it was made as he contended to a person in authority, and was procured by means of threats or inducements, or by false statements made by inspector to the prisoner. The statement was admitted in evidence. Counsel for prisoner also objected that the letter was not a post letter within the meaning of the Act, 1 Edw. VII., c. 19, s. 1, it having been written by the inspector as a decoy. Prisoner called no witnesses and his counsel contended on that ground he had the right of reply. Trial Judge ruled against him and Crown replied :—Held, 1. That there was no evidence that the confession was obtained by means of threats or inducements held out, and evidence was properly admitted; 2. The letter in question was a post letter within the meaning of the Act; 3. Crown always had the right of reply if its representative saw fit to use it. See as to this point, Rex v. Martin, 5 O. W. R. 317, 9 O. L. R. 218; Rex v. Ryan, 5 O. W. R. 125, 9 O. L. R. 137.

64. **Power of Attorney** — FAILURE TO SET OUT IN INDICTMENT.]—An indictment for theft under a power of attorney which omitted certain words of the statute, but of which particulars were ordered, will not be quashed, as such an omission (Crim. Code sec. 613 (d),) does not vitiate it being only a partial omission. Such defects are cured by the verdict. REGINA V. FULTON, 5 C. C. C. 36.

65. **Principal and Accessory** — SAME ACT.]—A fraudulent appropriation by the principal, and a fraudulent receiving by the accessory may take place at the same time, and by the same act. MCINTOSH V. THE QUEEN, 5 C. C. C. 254, 22 S. C. R. 180.

66. **Property Stolen under $10** — TERM OF IMPRISONMENT.]—A magistrate on the trial of a prisoner summarily by consent for the theft of property under $10 cannot impose a term of imprisonment exceeding six months. REGINA V. RANDOLPH, 4 C. C. C. 165.

67. **Railway Station** — Stealing "in or from" — Code 351.]—On motion by habeas corpus for the discharge of a prisoner convicted summarily by the stipendiary magistrate of Halifax, under s. 351 of the Code, for that he "did steal nine bottles of whiskey......in or from a certain railway building" :—Held, (Weatherbe and Meagher, JJ., contra), that the conviction was not bad as referring to two distinct and separable offences, depending on whether the words "in" and "from" as used in the section, are synonymous. Cf. Code 752, 798, 800, 955. Rex v. White, 34 N. S. R. 436.

68. **Receiver of Stolen Goods** — Conviction of an Accessory before the Fact of Receiving — Code Sec. 61.]—It is well established that one who is a principal in a theft, cannot be convicted of receiving, upon evidence merely of acts constituting him a principal offender, since the offence of theft must be complete before that of receiving can be committed. However, sec. 61 of the Can. Crim. Code, which now makes acts, that formerly constituted an accessory before the fact, a principal offence, has not the effect of making that doctrine applicable. Subsec. 2 of sec. 61 is directed to offences committed in the prosecution of a common purpose, which accessories might reasonably contemplate as likely to flow from the carrying out of that purpose. It does not make the subsequent receipt form part of the prior theft, though contemplated and intended to follow from it. Where therefore the accused is not an aider and abettor, or a principal in the second degree, in the commission of the theft, but has only counselled and procured the theft, and his connection is only that of an accessory before the fact, he may be convicted for the substantive offence of receiving; as there is nothing inconsistent in being an accessory before the fact of a theft, and the receiver of the stolen property afterwards. Regina v. Hodge, 2 C. C. C. 350.

69. **Reserved Case** — Evidence — Account of Possession.]—Where a reasonable account is given by an accused person in possession of stolen property, at the time when he is found in possession of the goods, it rebuts the presumption of guilt arising from the fact of possession. This principle does not comprehend an account given by the accused subsequently at this trial. Where the facts stated in the reserved case or submitted in evidence at the trial do not relate to the question of law reserved for the opinion of the appellate court, the case sent up will be quashed. R. v. McKay, 6 C. C. C. 151.

70. **Reserved Case** — Weight of Evidence — Insanity.]—Where a charge of theft upon which an accused was being tried was not disputed at the trial,, but the defence relied upon insanity, and the jury notwithstanding the Judge's directions that there was no evidence of insanity acquitted the accused on that ground, it was held that the question of the "sufficiency of the evidence of insanity being one depending upon the weight of evidence, could not be the subject of a reserved case by the trial Judge. Rex v. Phinney, 7 C. C. C. 280, 36 N. S. R. 288.

71. **Restitution of Stolen Property** — Absence of Identification at Trial.]—The prisoner was convicted for stealing from the person. At the trial the prosecutor testified that bank notes of the value of $70 were taken from him, and he gave the denomination of the notes, which included one for $20. Another witness testified that when the prisoner was arrested and brought to the police station she was searched and a $20 bank note and some smaller notes, amounting in all to $28, were found upon her. The money was not produced at the trial nor any evidence given to identify the notes found on the prisoner with the stolen notes. After the trial, upon the ex parte application of the prisoner, an order was made by a Judge in the county court Judge's criminal court, directing that the money found on the prisoner should be restored to her. A motion was made to set aside the order, whereon judgment was reserved. The Judge died without delivering judgment. The motion was renewed before his successor, who dismissed the application to set aside the ex parte order, and made an order for restitution to the prisoner, on the ground that the money was not produced and identified at the trial as part of the stolen property. Regina v. Haverstock, 21 Occ. N. 482.

72. **Restitution of Stolen Property** — Failure to Identify Property — Crim. Code Sec. 836-838.]—Where the accused

has been convicted of having stolen money, and some money has been found in his possession at the time of arrest; there must be proof that the money found on the prisoner belonged to the prosecutor before an order for restitution will be made under sec. 838. In this case no application had been made for compensation for loss of property under sec. 836. REX v. HAVERSTOCK, 5 C. C. C. 113, 21 Occ. N. 482.

73. **Restoring Goods**—ORDER BY JUDGE] —On an indictment for stealing goods, the prisoner was acquitted, the defence being that the goods were his own :—Held, that it was virtually a finding by the jury that the goods were not the property of the prosecutor, and, therefore, that the Judge had no right to order them to be restored to him. REGINA v. EVELETH, 5 All. N. B. R. 201.

74. **Stealing from the Person** — VALUE LESS THAN $10.]—A magistrate has summary jurisdiction without prisoner's consent under sec. 344. Also, accused consenting to be tried by a police magistrate, he may punish under sec. 785 to any sentence accused is liable to if he had been tried before the general sessions of the peace. Also, held stealing from the person is not covered by Crim. Code sec. 783. REGINA v. CONLIN, 1 C. C. C. 41.

75. **Stealing from the Person** — CRIM. CODE 344 .]—Is not covered by sec. 783 Crim. Code, but by sec. 344 Crim. Code. REGINA v. CONLIN, 1 C. C. C. 41, 29 O. R. 28.

76. **Stealing Goods in Foreign Country.**] —On an indictment for stealing, it appeared that the goods were taken in the state of Maine and brought into this province :—Held, that, in the absence of proof that the taking was larceny according to the laws of Maine, the prisoner could not be convicted of larceny here. REGINA v. HILL, 5 All. N. B. R. 630.

77. **Stolen Property** — RESTITUTION OF TO RIGHTFUL OWNER.]—Defendant was convicted of having received certain plates covered with amalgam stolen from a crushing mill, knowing them to have been stolen. An application was made by the Napier Gold Mining Company for restitution to them of a bar of gold extracted by defendant from the amalgam. It being uncertain whether the Company, or one Shaffer, were the parties properly entitled to the gold, it was ordered that the gold be handed over to the Company and Shaffer on their joint receipt, or to the Company with the sanction of Shaffer. QUEEN v. BLACK, 3 N. S. D. 231.

78. **Summary Trial.**]—A charge of stealing trees of a less value than $25 is governed by section 337 of the Code, and triable summarily and not by indictment. REX v. BEAUVAIS, 7 C. C. C. 494.

79. **Summary Trial** — CODE SEC. 785.]— The offence charged was for stealing a sum of money under value of $10, and it is governed by Code sec. 783. The marginal note to sec. 785 shows this latter section applies to cases other than those to which sec. 783 applies. The extreme limit of punishment under sec. 783 is six months. R. v. HAYWOOD, 6 C. C. C. 399.

80. **Summary Trial** — PRESUMPTION OF GUILT.]—If on a summary trial for theft, the conviction is based upon the consideration that there was a burden on the defendant to show that he was innocent, such conviction is not to be depended upon, and there has been a mistrial. REGINA v. MCCAFFREY, 4 C. C. C. 193.

81. **Summary Trial** — JURISDICTION OF STIPENDIARY — CODE SEC. 789-790.]— Defendant had been arrested on a charge of stealing a coat under the value of $20. He elected for summary trial before a magistrate pleading not guilty. He was convicted and sentenced to nine months' hard labor. On a motion for habeas corpus on the ground that under sec. 789 and 790 such sentence could be imposed only where a plea of guilty had been entered :—Held, that by the amendment to sec. 785, police magistrates in cities and towns now have power to try offences on consent of accused, for which he might be tried at a court of general sessions of the peace. REX v. BOWERS, 6 C. C. C. 264.

82. **Summary Trial by Consent** — CODE SECS. 782-785-789.] —Prisoner had been convicted by an acting stipendiary Magistrate for theft of $150. Held on motion for certiorari, 1. The conviction was bad because the magistrate did not hold the preliminary enquiry required by sec. 789

for the purpose of enabling him to decide whether or not the case should be disposed of summarily. R. v. WILLIAMS, 10 C. C. C. 330.

83. **Summary Trial** — COSTS — SENTENCE — RAILWAY CONDUCTOR RECEIVING MONEY FROM PASSENGERS.]—1. The punishment provided where a person is guilty of theft triable by two justices or a magistrate is provided by sec. 787 of the Code. 2. Under sec. 971 a justice has jurisdiction, where the offence is punishable with not more than two years imprisonment and no previous conviction is proved against the accused to direct that he be relieved on a recognisance to keep the peace, with or without sureties. 3. The costs or a part thereof may be ordered to be paid by the defendant and where not directed to be paid by instalments, it means forthwith. 4. A magistrate sitting for the summary trial of indictable offences is a "court" within the meaning of secs. 971-974. 5. A conductor employed on a railway is guilty of theft under sec. 308 when he takes money from passengers for fares, giving no ticket or receipt therefor, without reporting or accounting for the same to the company. R. v. McLELLAN, 10 C. C. C. 1.

84. **Suspension of Civil Right of Action.**]—The person upon whom a robbery has been committed, is even before conviction entitled to be considered as a creditor of the party committing the robbery, although the remedy for the recovery of the amount may be suspended until after conviction. REID v. KENNEDY, 21 Gr. 86. (Ont.).

85. **Suspension of Civil Right of Action.**]—In an action against a carrier for the non-delivery of a package of money, where the evidence sufficiently shewed a felony, a nonsuit was ordered. LIVINGSTONE v. MASSEY, 23 U. C. R. 156.

86. **Taking with Intent to Defraud** — STATING VALUE IN INDICTMENT — BONA FIDE CLAIM OF RIGHT.]—An indictment under 32 & 33 Vict., c. 21, s. 110, for unlawfully taking and appropriating property with intent to defraud, need not state the value of the property taken; although perhaps a prisoner could not be tried under the second clause of the section if the value was not stated :—Held, also on the trial of such an indictment, to be a proper direction, to tell the jury that they should acquit the prisoner if they thought he bone fide believed he had a claim of right in the property taken. REGINA v. HORSEMAN, 20 N. B. R. 529.

87. **Trespess to Stolen Goods.**]—The plaintiff's horse had been stolen, and sold at public auction, but the thief was unknown. The plaintiff afterwards seeing the horse took possession of it, and the purchaser retook it from him :—Held, that the plaintiff might maintain trespass against the purchaser, without shewing a prosecution to conviction. BOWMAN v. YIELDING, M. T. 3 Vict. (Ont.).

88. **Warrant of Commitment** — DESCRIPTION OF OFFENCE.]—Where a charge of theft as referred to in a warrant of commitment to gaol for that offence alleged the stealing of property from a building belonging to the informant, but did not allege that the thing stolen was the property of the informant, it was held that the warrant contained a sufficiently definite statement of the alleged crime theft. REGINA v. LEETE, 7 C. C. C. 301.

89. **Under Ten Dollars.**]—The extreme penalty that can be imposed for larceny under ten dollars upon summary trial is six months' imprisonment. EX PARTE McDONALD, 9 C. C. C. 368.

THREATS.

See MENACES AND THREATS.

TOLLS.

1. **Refusal to Pay Tolls.**]—A conviction under C. S. U. C., c. 49, s. 95, stating that defendant wilfully passed a gate without paying toll, and refused to pay toll :—Held, good. Quære, whether it would be sufficient to allege only that he wilfully passed without paying, without in any way shewing a demand. REGINA v. CAISTER, 30 U. C. R. 247.

Held, also, that the non-exemption of the defendant, if essential to be alleged was sufficiently stated in the conviction. IB.

Held, also, unnecessary to name any

time for payment of the fine, as it would be payable forthwith. IB.

Held, also, that it was clearly not requisite to shew that defendant was summoned or heard, or any evidence given. IB.

2. **Refusal to Pay Toll.**]—Defendant, in a private carriage, refused to pay toll, on the ground that he was in uniform, and adjutant of the military train, and therefore exempt :—Held, that the conviction could not be quashed on the ground of his being on duty, as the exemption had not been claimed on that account. REGINA v. DAWES, 22 U. C. R. 333.

TRADE COMBINATIONS.

Lessening Competition in Retailing Coal — CODE SEC. 520.]—The defendant was charged with three offences under Code sec. 520: (1) a conspiracy to lessen competition; (2) to restrain trade; (3) to unreasonably enhance prices. There was in fact but one agreement :—Held, 1. That there could therefore be but one crime; the crime is in the conspiracy not in the unlawful acts comprehended in it; (2) That the accused and others having formed an association, the purpose of which was plainly to obtain for themselves the whole control of the purchase (for the purpose of sale in the Province) of all coal for their own advantage and profit, is a combination for unduly lessening competition in the supply of the commodity, and a conviction for conspiracy under sec. 520 (D.) is properly made. 3. It is doubtful whether Code sec. 930 applies to a prosecution by indictment, but it fails in this case as the offence was a continuing one. R. v. ELLIOTT, 9 C. C. C. 505, 9 O. R. 648.

See also CONSPIRACY.

TRADE MARK.

1. **Corporation** — FALSE TRADE DESCRIPTION — WHETHER TRIABLE SUMMARILY.]—The defendants, a Joint Stock Co., were charged under sec. 448 of the Code, with selling certain goods to which a false trade description was applied ; on an application for a prohibition to prevent magistrate from hearing the charge :—Held, that the offence is a statutory one, and entirely apart from the question of the defendants being a corporation, the proceedings should be by indictment. Motion made absolute. Costs against informant. REGINA v. T. EATON CO., 2 C. C. C. 252.

2. **Falsely Applying** — ONUS OF PROOF — CRIM. CODE SEC. 447.]—The onus of proof that the assent of the proprietor of a trade-mark has not been given, on a charge of falsely applying a trade-mark (Crim. Code sec. 447) is on the prosecution, and section 710 of the Crim. Code does not apply. REGINA v. SAMUEL HOWARTH, 1 C. C. C. 243.

3. **Forgery** — CRIM. CODE SEC. 448 — EVIDENCE.]—Where the facts showed an intention to deceive, it is not necessary that the resemblance be such as would deceive persons who would see the two marks placed side by side, and it is not necessary to prove that any person has been actually deceived in order to restrain its use. REGINA v. AUTHIER, 1 C. C. C. 68.

4. **Invalidity of Registration** — CODE SEC. 447.]—The accused was charged with forging a trade-mark, to wit : "Glyco-Thymoline" by using one, to wit : "Glyco-Thymol" :—Held that the only trade-mark within the meaning of Code sec. 443 is one which is registered in Canada; that a merely descriptive word or name, that is, one which merely denotes the goods or some quality of them, is not capable of registration. R. v. CRUTTENDEN, 10 C. C. C. 223.

5. **Selling Beverage in Bottle with Name of Another on it** — UNREGISTERED NAME — CRIMINAL CODE S. 449 (b).]—Defendant, a ginger ale and soda water manufacturer, filled four bottles having another like manufacturer's name permanently affixed thereon, and placed them upon the market for the purpose of sale. Defendant was convicted therefor under Criminal Code s. 449 (b), which enacts that "Every one is guilty of an indictable offence who, (b) being a manufacturer, dealer, or trader, or a bottler, without the written consent of such person, trades or traffics in any bottle or siphon which has upon it the duly regis-

tered trade mark or name of another person, or fills such bottle or siphon with any beverage for the purpose of sale or trade. Defendant pleaded name not duly registered. Plea admitted :—Held, it was not necessary that such name should be registered as a trade mark, the object of the legislation evidently being to prevent as far as possible, the easy commission of a fraud of that kind. In the French version of the Code, the words are "la marque de commerce dument enregistree ou le nom d'une autre personne," which more plainly indicate that the words "duly registered" are confined to the trade mark and do not apply to the name; s.-s. 2 of s. 449 supports this construction. REX v. IRVINE, 5 O. W. R. 352, 9 O. L. R. 389.

6. **Soda Water Bottle** — RE-FILLING — CODE SEC. 449.]—It is not necessary to support a conviction under Code sec. 449 that the trade mark or name should be registered. It is sufficient if the name of the manufacturer is on the bottle which is re-filled by the other person. R. v. IRVINE, 9 C. C. C. 407.

TRANSIENT TRADER.

1. **Ontario Municipal Act** — LICENSE.]— A butcher who sells meat without license, while occupying temporary premises, and not being entered upon the assessment roll in respect to income or personal property, is a transient trader, and amenable to a municipal by-law passed in pursuance of the provisions of the Ontario Municipal Act, R. S. O., 1897, ch. 223. REX v. MYERS, 7 C. C. C. 303, 6 O. L. R. 120, 23 Occ. N. 280.

2. **Penalty** — COSTS — IMPRISONMENT — DISTRESS.]—The defendant was convicted before a justice of the peace for that she did on a certain day, and at other times since, occupy premises in the town of B., and did carry on business on said premises by selling dry-goods, she not being entered on the assessment roll of the town for income or personal property for the current year, and not having a transient trader's license to do business in the town, as required by a certain by-law of the town; and was adjudged for her offence to forfeit and pay the sum of $50 (to be applied on taxes to become due) to be paid and applied according to law, and also to pay to the justice the sum of $11.45 for his costs in that behalf; and if these sums were not paid forthwith she was adjudged to be imprisoned. The first clause of the by-law provided that every transient trader who occupied premises in the municipality and who was not entered in the assessment roll, and who might offer goods or merchandise for sale, should take out a license from the municipality. The second clause provided that every other person who occupied premises in the municipality for a temporary period should take out a license. The eighth clause provided for the imposition of a penalty for a breach of any of the provisions of the by-law, and that, in default of payment of the penalty and costs, the same should be levied by distress :—Held, that the defendant was not brought within either the first or second clause of the by-law, as it was not alleged or charged that she was a transient trader or that she occupied premises in the municipality for a temporary period; and these omissions were fatal to the conviction. Regina v. Caton, 16 O. R. 11 followed. Held, also, that the conviction was open to objection because of the application of the penalty, the award of costs to the justice, instead of to the informant, and the award of imprisonment upon default in payment of the penalty. The conviction was quashed and costs were given against the informant. REGINA v. ROCHE, 32 O. R. 20.

3. **Trading Stamps.**]—The defendants arranged with various retail merchants that each should receive from him trading stamps the property of which, however, was to remain in him, and should pay him fifty cents per hundred stamps, and give one to each customer for every ten cents of cash purchase, while the defendant should advertise the merchants in certain directories and otherwise. A blank space was left in these directories for pasting in such stamps, and every customer who brought to the defendant one of the directories with a fixed number of stamps pasted in was entitled to receive in exchange any article he might select out of an assortment of goods kept in stock by the defendant. Apart from this the goods were not for sale :—Held, that these transactions did not constitute a selling or offering for sale by the defendant within

the meaning of a municipal by-law, passed under R. S. O., 1897, c. 223, s. 583, s.-ss. 30, 31. REGINA v. LANGLEY, 31 O. R. 295.

4. **Transient Traders.**]—A by-law of a city provided that "No person not entered upon the assessment roll......or any who may be entered for the first time in the said assessment roll......and who at the time of commencing business.... has not resided continuously in said city ......at least three months shall commence business......for the sale of goods or merchandise......until such person has paid......the sum of......by way of license" :—Held, that the statute under which the by-law was framed, R. S. O., 1897, c. 223, s. 583, s.-ss. 30 and 31, relates to transient traders who occupy premises in a municipality, and that clause (b) of s.-s. 31 defining the term "transient traders" does not modify the provision as to occupation, and that the by-law was defective and invalid in being directed merely against persons not entered upon the assessment roll and who had resided continuously for three months in the municipality, and was silent as to these persons being in occupation of premises. Conviction quashed. REGINA v. APPLEBY, 30 O. R. 623.

5. **Transient Traders.**]—The by-law under which the defendant was convicted, provided that "no transient trader or other person occupying a place of business in the town of M., for a temporary period less than one year, shall......offer goods wares, and merchandise for sale...... within the limits of the town of M., without, or until he shall have first duly obtained a license for that purpose." The conviction was for that the defendant, being a transient trader, occupying a place of business in the town of M., did sell certain goods, wares, and merchandise, contrary to the by-law :—Held, that the want of an allegation in the conviction that the defendant was a transient trader whose name had not been entered on the assessment roll for the current year, was fatal. REGINA v. CATON, 16 O. R. 11.

6. **Transient Traders.**] — On the trial of a charge of being a transient trader without a license contrary to a municipal by-law, no copy thereof certified by the clerk, to be a true copy, and under the corporate seal, as required by s. 289 of R. S. O., 1887, c. 184, was given in evidence. A by-law stated by the solicitor for the complainant to be the original by-law, was, however, read to the defendant in court :—Held, that the requirements of s. 289 not having been complied with, the conviction was invalid, and must be quashed. REGINA v. DOWSLAY, 19 O. R. 622.

TREASON.

Forfeiture of Estate.]—The estate of a traitor concerned in the rebellion of 1837, who accepted the benefit of the 1 Vict., c. 10, is at once vested in the Crown under the 33 Hen. VIII., c, 20, s. 2, without office found. DOE D. GILLESPIE v. WIXON 5 U. C. R. 132.

TRESPASS.

1. **Police Magistrate** — JURISDICTION — WARRANT TO COMPEL ATTENDANCE OF WITNESS — RIGHT OF POLICE TO SEARCH WITNESS ARRESTED — DUTY OF CONSTABLE — R. S. C., CH. 174, SEC. 62 — MALICIOUS ARREST — IMPRISONMENT — DAMAGES.]—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 A. R. 315.

2. **Railway.**]—Section 283 of the Railway Act of Canada, 51 Vict., c. 29, enabling a justice of the peace for any

county to deal with cases of persons found trespassing upon railway tracks, applies only where the constable arrests an offender and takes him before the justice. A summary conviction of the defendant by a justice for the county of York, for walking upon a railway track in the city of Toronto, was quashed where the defendant was not arrested but merely summoned. REGINA v. HUGHES, 26 O. R. 486.

3. **When Magistrate's Jurisdiction is Ousted.**] — To oust the jurisdiction of a magistrate on an information charging wilful damage to property, there must not only be an honest belief by the person charged that he had the right to do the act, but the act must be done under a fair and reasonable supposition of right. Whether such a supposition is warranted is for the magistrate to determine upon the evidence. REGINA v. DAVY, 4 C. C. C. 28.

TRIAL.

I. GENERALLY.
II. PROCEDURE.
III. SPEEDY TRIAL.
IV. SUMMARY TRIAL.

I. GENERALLY.

1. **Absence of Accused without his Consent** — MISCONDUCT.]—Misconduct is the only ground on which a trial may be proceeded with in the absence of the accused unless the court does so at his request. If the defendant is physically unfit to come and the Crown officers do not think it proper to take the responsibility of bringing him in that condition to the trial, it cannot in view of sec. 660 Crim. Code, proceed in his absence. REX v. ALFRED MCDOUGALL, 8 C. C. C. 238, 8 O. L. R. 30.

2. **By Jury, Right to** — ASSAULT OCCASIONING ACTUAL BODILY HARM — CRIMINAL CODE, s. 262 — N. W. T. Act, ss. 66 and 67 — CONSTRUCTION OF STATUTES.] —A person charged with assault occasioning actual bodily harm contrary to s. 262 of the Criminal Code is not entitled, under s. 67 of the North-West Territories Act, to be tried with the intervention of a jury. Section 66 extends to all minor offences included in the several offences specifically enumerated therein. THE KING v. HOSTETTER, 5 Terr. L. R. 363.

3. **Capital Sentence** — COURT OF KING'S BENCH.] — A criminal convicted at a court of oyer and terminer of a capital felony, may be brought up to the court of King's bench for sentence. REX v. KENREY, 5 O. S. 317.

4. **Committal for One Offence** — CHANGE OF VENUE — TRIAL FOR TWO OFFENCES — ADMINISTERING OATH — COMMENT BY JUDGE ON PRISONER NOT TESTIFYING — WITHDRAWAL OF COMMENT.]—The prisoner was committed for trial in one county upon a charge of perjury alleging an offence committed in that county. The venue was changed to another county where he was tried and found guilty upon an indictment containing two counts, alleging two offences arising out of the same matter. The facts relating to both of the charges appeared in the depositions taken by the committing magistrate :—Held, that there was jurisdiction to try for both offences in the county to which the venue had been changed. On the occasion when the perjury was alleged to have been committed the oath was administered to the prisoner in open court by the clerk of the county court sitting in the general sessions of the peace for and at the verbal request of the clerk of the peace :—Held, that the witness was properly sworn. At the trial the prisoner did not testify on his own behalf and the trial Judge in his charge to the jury, contrary to the provisions of the Canada Evidence Act, 1893, s. 4, s.-s. 2, commented upon that fact, although, when his attention was drawn to it, he recalled the jury and withdrew his comment :—Held, that the prisoner had a right to have his case submitted to the jury without the comment, and, having been deprived of that right, there was a substantial wrong done to him which could not be undone by calling back the jury and withdrawing the comment. New trial ordered. REGINA v. COLEMAN, 30 O. R. 93.

5. **Commitment for Trial** — DIES NON JURIDICUS — SUBSEQUENT TRIAL — COURT OF RECORD — HABEAS CORPUS — WRIT OF ERROR.]—The prisoner was on a statutory holiday committed for trial by a

magistrate upon a charge of attempting to steal from the person, and on being brought before the county court Judge in compliance with s. 766 of the Criminal Code, 1892, consented to be tried by the Judge without a jury, and, being so tried, was convicted and sentenced to a term of imprisonment — Held, upon the return to a writ of habeas corpus, that the fact that the prisoner was committed for trial and confined in gaol on a warrant that was a nullity could not affect the validity of the trial before the Judge under the Speedy Trials Act. Upon appeal the court of appeal held that the county court Judge's criminal court being a court of record, its proceedings were not reviewable upon habeas corpus, but only upon writ of error. REGINA v. MURRAY, 28 O. R. 549.

6. **Commission of Assizes.**]—Held, that the Crown, by prerogative right, could issue a commission to the Judge of the provisional jurisdiction district of Algoma to hold a court of oyer and terminer, and general gaol delivery, for trial of felonies, &c. Semble, per Wilson, J., that such Judge having by s. 94 of C. S. U. C., c. 128, the same powers and duties as a county Judge in Upper Canada, he might have been appointed under C. S. U. C., c. 11, s. 2, to act as commissioner. REGINA v. AMER, 42 U. C. R. 391.

7. **Consent to Summary Trial** — FALSE PRETENCES — TERM OF IMPRISONMENT.]—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., c. 32 (D.), only authorizing a sentence for any term less than a year. GOODMAN v. REGINA, 3 O. R. 18.

8. **Court of Record** — HABEAS CORPUS.]—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., 1877, c. 70, s. 1, there was therefore no right to the writ. REGINA v. ST. DENIS, 8 P. R. 16.

Held, also, that the Judge had power to imprison. IB.

9. **Conviction for Offence not Charged.**]—A county court Judge trying a prisoner summarily under 32 & 33 Vict., c. 35 (D.), has the same authority to convict of an offence under 32 & 33 Vict., c. 21, s. 110 (D.), instead of that charged, as a jury has. REGINA v. HAINES, 42 U. C. R. 208.

10. **Criminal Libel** — COSTS — DEPOSITIONS NOT USED AT TRIALS — ABORTIVE TRIAL — CR. CODE, SS. 833 AND 835.]—In a criminal libel action, defendant, in support of his plea of justification, obtained a commission, and had the evidence of certain witnesses out of the jurisdiction taken, for use at the trial. The evidence was used at the first trial and the jury again disagreed. At the second trial the jury again disagreed. At the third trial defendant was acquitted, but the evidence was not used, owing to the private prosecutors giving evidence, and admitting substantially what was stated by the witnesses in their depositions before the commissioner : — Held, by Drake, J., that as the commission evidence was not put in by defendant as part of his case, defendant should be deprived of the costs of it :—Held, also, that defendant was not entitled to the costs of the abortive trials. REX v. NICHOL, 8 B. C. R. 276.

11. **Deposition taken at Preliminary Enquiry** — PROOF OF ABSENCE OF WITNESS.]—In order to render the depositions of a witness taken at the preliminary enquiry admissible at the trial it is not sufficient to show by letters and telegrams received, the latest dated six days before the trial, that the witness is in the United States. REX v. TREFRY, 8 C. C. C. 297.

12. **Deposition taken at Preliminary Enquiry** — ABSENCE OF WITNESS.]—Before the deposition of a witness taken at a preliminary enquiry and who has

left the country can be used as evidence at the trial, it must be shown that his absence is of a permanent character. REX v. MCCULLOUGH, 8 C. C. C. 278.

13. **Election to be Tried by Jury** — RE-ELECTION — MANDAMUS TO SHERIFF TO BRING PRISONER BEFORE COUNTY JUDGE.]—Where a prisoner is brought before a county court Judge under s. 766 of the Criminal Code, and elects to be tried by a jury, and is thereupon remanded under s. 767 to await such trial, although his election is made under a mistake or qualified by using the words "at present," there is no duty upon the sheriff to notify the Judge a second time under s. 766, or to bring the prisoner again before him to enable the prisoner to re-elect to be tried by the Judge. REGINA v. BALLARD, 28 O. R. 489.

14. **Election to be Tried by Judge or Judge and Jury** — WITHDRAWAL OF ELECTION — NEW ELECTION — EFFECT OF ELECTION — REFUSAL OF JUDGE TO DISPENSE WITH JURY.]—The N. W. T. Act, R. S. C., 1886, c. 50, s. 67 (section substituted by 54-55 Vic., 1891, c. 22, s. 9), provides that "When the person is charged with any other criminal offence the same shall be tried, heard, and determined by the Judge with the intervention of a jury of six; but in any such case the accused may, with his own consent, be tried by a Judge in a summary way and without the intervention of a jury :—Held, that in the event of the accused electing to be tried by a Judge alone the Judge is not bound so to try the case, but may insist upon the intervention of a jury. So, held where the accused was first tried with the intervention of a jury who disagreed, and upon a second trial coming on withdrew his first election and elected to be tried by the Judge alone. THE QUEEN v. WEBSTER, 2 Terr. L. R. 236.

15. **Indictment upon Other Charge than one upon which Committed.**]—The prisoners were committed for trial on a charge of gambling in a railway train. On the case coming before the county Judge for trial, an indictment was preferred, under 42 Vict., c. 44, s. 3 (D.), for obtaining money by false pretences. The prisoners' counsel objected to the prisoners being tried on a different charge from that on which they had been committed. The objection was over-ruled, and the charge read over to the prisoners, and, on its being explained that they could be tried forthwith or remain in custody until the next sitting of oyer and terminer, &c., they pleaded not guilty, and said that they were ready for trial. The case then proceeded, and the prisoners were convicted; no question having been raised as to their having been tried without their consent, although their counsel took other objections to the proceedings. A writ of habeas corpus having been issued, and the prisoners' discharge moved for, on the ground of the absence of such consent :—Held, that the motion must be refused. REGINA v. GOODMAN, 2 O. R. 468.

16. **Intermixing of Trials** — RESERVATION OF PUNISHMENT.]—Where similar offences are tried consecutively the magistrate in each case announcing his decision at the end of each trial by reserving punishment, this omission to impose the penalty at the moment does not operate to the prejudice of the defendant. REX v. BIGELOW, 8 C. C. C. 132, 24 Occ. N. 141.

17. **Judge's Charge** — ALIBI — MISDIRECTION.]—Where the defence to a criminal charge is an alibi, it is misdirection to tell the jury that the onus is on the prisoner to prove it to their entire satisfaction, and to show beyond all question or reason that he could not have been present at the commission of the crime. REX v. MYSHRALL, 8 C. C. C. 474, 35 N. B. R. 507.

18. **Judge's Charge** — DEFINITIONS — FAILURE TO INSTRUCT JURY.]—It is the duty of the Judge in a criminal trial with a jury to define to the jury the crime charged, and to explain the differences between it and its cognate offences, if any. Failure to so instruct the jury is good cause for granting a new trial and the fact that counsel for the accused took no exception to the Judge's charge is immaterial. REX v. WONG ON AND WONG GOW, 8 C. C. C. 723, 10 B. C. R. 555.

19. **Kidnapping** — POSTPONING TRIAL — RECORD — AMENDMENT — RE-SENTENCING PRISONER.]—The plaintiff in error, having been committed to gaol for trial on a charge of unlawfully and forcibly kidnapping and taking one B. without authority, with intent to transport him out of Canada against his will, was, on the 24th day of June, 1872,

brought before the county Judge, by whom he consented to be tried under 32 & 33 Vict., c. 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, &c., (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, &c. The Judge fixed the 3rd 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 July, when the prisoner was found guilty on both counts. An amendment of the indictment was allowed by the Judge, changing the name of R. B to J. R. B. In the notice required from the sheriff to the Judge by 32 & 33, c. 35, s. 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, also, 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., c. 20, s. 69, under which the charge was made, "whosoever, 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, that the intent required applied to the seizure and confinement in Canada, as well as 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., c. 113, s. 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., c. 29, ss. 1 and 71 (D.) :—Held, also, that the court would not presume that the two counts referred 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., c. 35, was not shewn for the record and judgment were in the form prescribed by that Act :—Held, also, that the sheriff's notice was sufficient, as 32 & 33 Vict., c. 35, s. 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 the receive the proper judgment. CORNWALL v. REGINA, 33 U. C. R. 106.

20. **Mutiny Act.**]—Held, per J. Wilson, J., that the Imperial Mutiny Act does not override C. S. C., s. 100, but that the latter was passed in aid of it, and is therefore in force. Per A. Wilson, J., that the punishment by fine and imprisonment, imposed by the Provincial Act, stands abolished as long as the Mutiny Act is in force, and that the imprisonment can in no case exceed six calendar months; but that the power of trial by the court of oyer and terminer, under the Provincial Act, has not been taken away by the Mutiny Act; and therefore that the defendant in this case could not complain as he had been tried by a tribunal of this kind, and sentenced to no longer imprisonment than the last mentioned period; and that though a fine of 10s. had also been imposed, this was merely nominal, in compliance with the Provincial statute, and would not entitle him to be discharged as the court had power to pass the proper judgment, if an improper one had been given. REGINA v. SHERMAN, 17 C. P. 166.

21. **Nuisance** — GENERAL VERDICT — SECOND TRIAL.]—On an indictment for nuisance in obstructing a highway, judgment had been arrested 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, 12 U. C. R. 519.

22. **Official Interpreter** — POWER OF COURT OVER.]—Where an official interpreter has been appointed by the Government to act in criminal trials, the trial Judge has no power to prevent him from acting on an objection for cause being taken by counsel. REX v. WONG ON, (No. 1), 8 C. C. C. 342.

23. **Of Refugee only for Offence Charged.**]—When surrendered to the government of the country from which he fled, the government of the latter are bound to try the accused for the offence for which he is surrendered, and not for any other or different offence. IN RE BURLEY, 1 C. L. J. 34.

24. **Proof of Judge's Commission** — CAPTION.]— On error brought it was held that on the record of a conviction for murder 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 C. S. U. C., c. 11, as amended by 29 & 30 Vict., c. 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 a Queen's counsel or county court 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 C. S. U. C., c. 99, s. 52. WHELAN v. REGINA, 28 U. C. R. 2.

25. **Right of Reply.**]—It was held in a prosecution for conspiracy that although evidence was called by only one of the defendants it might have enured to the benefit of both, and that the right to a general reply was with the counsel for the Crown. REGINA v. CONNOLY, 25 O. R. 151.

26. **Right of Reply** — SEC. 661.]—The practice in criminal law relative to addressing the jury held the same as in civil actions. Where the evidence is called for the defence prisoner's counsel has the last address. The right of reply referred to in Sec. 661 of the Code, allowed to the Attorney-General or prosecuting attorney, is a right to again address the jury at the close of the evidence. R. v. LEBLANC, 6 C. C. C. 348, 29 C. L. J. 729.

27. **Second Trial**—NECESSITY TO PLEAD AGAIN TO INDICTMENT.]—Where a prisoner is placed on trial the second time, at the same sittings, the first jury having disagreed, it is unnecessary to ask him to plead again to the indictment, or to read it over again to him. REX v. GAFFIN, 8 C. C. C. 194.

28. **Second trial of Prisoners under Indictment.**]—Where, on the trial of prisoners indicted for breaking and entering a bank, the jury disagreed, and there was no time left for a second trial during the then sittings of the court :—Held, that a trial could be obtained by the issue of a commission by the Government, and that the court could not order a new trial of the cause, or discharge the prisoners on their own recognizances. QUEEN v. WATSON ET AL., 2 R. & C. N. S. R. 1.

29. **Separate Charges** — HEARING SUBSEQUENT CHARGES BEFORE CONCLUDING FIRST CHARGE.]—The prisoners were charged on two separate charges of receiving stolen goods knowing them to have been stolen, and also of house-breaking and stealing. The first case was heard on the 27th December, and the second on the 28th December, but the first was adjourned to December 30th to let in evidence for the defence. It was held that the mixing up of the trials did not prejudice the prisoners. The circumstances of the three charges were altogether different as to time and place, and the only identity was in the persons charged. As the trial Judge had stated that he came to his finding in the first case before hearing the second case, and that he was not conscious that he was biased in coming to his conclusion in the second case through the knowledge acquired in the hearing of the first and third cases his statement ought to be accepted and conviction upheld. REX v. BULLOCK, 6 O. L. R. 663, 2 O. W. R. 901, 8 C. C. C. 8.

30. **Several Prisoners** — NO EVIDENCE AGAINST ONE.]—Where no evidence appears against one of several prisoners, he ought to be acquitted at the close of the prosecutor's case. REGINA v. HAMBLY, 16 U. C. R. 617.

31. **Similar Offences** — Hearing Evidence on Second Charge before Deciding First — Conviction.]—A conviction was quashed where it was shewn that the magistrate heard two cases for similar offences, either of which by an amendment could have been tried under the process for the other, and the magistrate had after taking the evidence in the first case adjourned it, and took up the trial of the second. The evidence in the first case although dismissed, was under the circumstances disclosed, calculated to influence the magistrate against the defendant in the case in which the defendant was convicted. Rex v. Burke, (No. 2) 8 C. C. C. 14.

33. **Statement by Prisoner Defended by Counsel.**]—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, 1 B. C. R., pt. II., 119.

II. Procedure.

1. **Juror** — Order to Stand by — Time.]—The direction to a juror to stand by is practically a challenge for cause, and therefore the order to stand by must be given at a time when a challenge could be made; and, inasmuch as the right to challenge must be exercised before the juror has taken the book in order to be sworn, the direction to stand by can only be given before the juror has received the book. Rex x. Barsalou, Q. R. 10 Q. B. 180.

2. **Jury** — Influence upon, by Judge's Remark — Conspiracy — Evidence — Reserved Case — Prejudice of Juror — New Trial — Affidavits — Misconduct.]—A verdict cannot be impeached in consequence of an observation made by the Judge presiding while the trial was proceeding, unless such observation was calculated to influence the jury against the defendant; and consequently, a remark of the presiding Judge to the defendant's counsel while the jury was being sworn, that "if you continue to challenge every man who reads the newspapers, we shall have the most ignorant jurors selected for the trial of this cause," is not a proper ground for a reserved case, it having no tendency to influence the jury one way or the other. 2. On a trial for conspiracy to defraud, a railway company by fraudulently obtaining information of the secret audits about to be made and furnishing the same to conductors of cars to enable them to be prepared for the audits, proof that information of this nature might be given by one conductor to another for purposes other than to defraud the company, was properly excluded, because such questions could not disprove the object of the conspiracy or throw any doubt on the evidence which had been adduced to shew the object which the parties had in view. 3. An observation by the presiding Judge, in his charge to the jury, to the effect that "about forty or fifty witnesses had been examined for the purpose of establishing the defendant's good character, and that it was very strange that it should take forty or fifty witnesses to establish it," is not an irregularity which can constitute a ground for granting a reserved case. 4. A new trial should not be ordered in consequence of remarks made by a juror tending to shew prejudice, unless it be shewn that he was so prejudiced as to be unable to give the defendant an impartial trial. 5. An application for a new trial on the ground of improper conduct of the jury must be supported by affidavits clearly setting forth the alleged irregularity, and, in the absence of full proof under oath, the presumption is that the jury properly performed its duty. 6. The affidavits of jurors are not admissible to support and confirm the presumption that the proceedings of the jury were correct, and that there was no misconduct. Rex v. Carlin, Q. R. 12 K. B. 368.

3. **Jury** — Right to — Assault — Criminal Code.]—A person charged with assault occasioning actual bodily harm contrary to s. 262 of the Criminal Code is not entitled, under s. 67 of the North West Territories Act, to be tried with the intervention of a jury. Section 66 extends to all minor offences included in the several offences specifically enumerated therein. Rex v. Hostetter, 5 Terr. L. R. 363.

4. **Proceedings at Trial** — Lack of Summons — Notice.]—Unless dispensed with by statute or waived, there must be

some previous summons or notice, to the party charged, of the hearing of the charges against him. This may be waived by appearing, pleading and defending. But asking an adjournment for the purpose of procuring evidence is not necessarily a waiver. REGINA V. VROOMAN, 3 Man. L. R. 509.

5. **Offence other than that for which Prisoner Committed.**]—Held, that, notwithstanding the provisions of s. 773 of the Criminal Code, 1892, a Judge should not, against the wish of a prisoner, give his consent, at the trial before him without a jury which the prisoner has elected to take, to any charge being preferred in the indictment unless it is clear that, while it may be more formally or differently expressed, it is substantially the same charge as the one on which he was committed for trial. REX V. CARRIERE, 22 Occ. N. 187, 14 Man. L. R. 52.

6. **Place other than Court House.**]—At the trial of an indictable offence the presiding Judge has the power to order the court to be adjourned to a place in the county other than the court house, for the purpose of allowing the jury to hear the evidence of a witness who was unable through illness to leave his home. REX v. ROGERS, 36 N. B. Reps. 1.

7. **Right of Jury** — STEALING CATTLE.] —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 to be tried by jury. REGINA V. PACHAL, 20 Occ. N. 192, 4 Terr. L. R. 310.

8. **Proceedings at Trial** — SUNDAY.]—Judicial proceedings should not be conducted on Sunday, and where the prisoner was committed for trial at a preliminary investigation before a magistrate on Sunday:—Held, that he was entitled to his discharge, following Mackalley's case, 9 Co., 66 and Waite v Hundred of Stoke, Cro. Jac. 496. REGINA V. CAVELIER, 11 Man. L. R. 333.

III. SPEEDY TRIAL.

1. **Adding New Charge** — PERJURY — CODE SEC. 773.]—A new charge cannot be preferred against an accused person under Code sec. 773, without the consent of the Judge first being obtained; and after election, the charge preferred must be the one on which he was committed for trial (Sec. 767). One of the elements of the crime of perjury is that the accused knowing the fact, swore to what he knew to be false; and such is an essential allegation to charge the crime of perjury. Where the alleged perjury was committed in an affidavit, the whole context of the affidavit must be looked at, and the statements weighed as a whole in arriving at the conclusion of the guilt or innocence of the accused. Where a civil suit is pending involving the very question on which perjury is alleged, the court has the discretion, which would be wisely exercised, to defer the trial of the criminal charge till the civil suit has been determined. R v. COHEN, 6 C. C. C. 386.

2. **Adjournment** — CROWN — POWER OF COURT TO ALLOW ADJOURNMENT AFTER TRIAL HAS COMMENCED.]—Although the Crown elects to proceed with a speedy trial in the absence of a material witness, and although the trial has commenced, the court has power to grant an adjournment to enable the Crown to secure the witness. R. v. GORDON, 6 B. C. R. 160, 2 C. C. C. 141.

3. **Adjournment** — POWER OF COURT TO GRANT, WHERE TRIAL COMMENCED.]—Although the Crown elects to proceed with a speedy trial in the absence of a material witness, and although the trial has commenced, the court has power to grant an adjournment to enable the Crown to get the witness. R. v. GORDON, 2 C. C. C. 141, 6 B. C. R. 160.

4. **After Bail by Magistrate.**]—A person accused of an indictable offence who has been admitted to bail under Code sec. 601 by the magistrate before whom he is brought for preliminary examination upon the charge, has a right to speedy trial under Code sec. 765 to the same extent as if the magistrate had committed him for trial under sec. 596. REGINA V. LAURENCE, 5 B. C. R. 160, 1 C. C. C. 295.

5. **After Preliminary Enquiry before same Magistrate.**]—A district magistrate in the Province of Quebec in the exercise of his duties as a justice of the peace can hold a preliminary enquiry and can subsequently after the accused has been committed or bailed by him for trial and he has been placed and is in custody, give such accused, with his consent, a speedy trial without a jury. THE KING v. BRECKENRIDGE, 7 C. C. C. 116, Q. R. 12 K. B. 474.

6. **Amendment** — FIAT OF ATTORNEY-GENERAL — NECESSITY OF — DISORDERLY HOUSE — PLEA OF AUTRE FOIS CONVICT — CODE SECS. 198-633-773-783.]—Defendant was charged under the speedy trials provisions of the Code with having unlawfully kept a disorderly house on a certain date named. The prosecutor asked leave to amend by including several months previous in the charge. Leave to amend was refused on the grounds that Code sec. 773 did not contemplate the substitution or addition of charges founded on entirely new facts not disclosed in the depositions. Counsel for the private prosecutor has no locus standi to prosecute at a trial under the speedy trials provisions without the fiat of authority from the Attorney-General. Accused pleaded autre fois convict, and tendered in evidence a certificate of conviction, which set out his conviction for a similar offence including the date of the present charge, and referred to the same premises:—Held, the plea had been sufficiently made out. R. v. CLARK, 9 C. C. C. 125.

7. **Application of** — SPEEDY TRIALS ACT — APPLIES ONLY TO PERSONS "COMMITTED".]—On the hearing of an information for an assault on a peace officer, the magistrate held the accused to bail, which was furnished, but neglected to commit him for trial (Code 596). After trial and conviction by the county court under the Speedy Trials Act (Code 765), motion was made to quash the conviction:—Held that as the provision of the Code 765 only applied to "persons committed to jail for trial," the conviction was bad, and the county court without jurisdiction. REGINA v. JAMES GIBSON, 29 N. S. R. 4.

8. **Bail Surrendering** — RIGHT TO ELECT TO BE TRIED SUMMARILY.]—The surrender of defendants out on bail, including the surrender by a defendant himself 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., c. 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 where done through inadvertence, s. 143 of R. S. C., c. 174 not being in such case any bar. Two indictments were laid against defendants, one for conspiracy to procure W. to sign the documents representing them to be agreements, whereas they were in fact 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 s. 278 of R. S. C., c. 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, considered. REGINA v. BURKE, 24 O. R. 64.

9. **Charge** — 1889, c. 47.]—Semble, under The Speedy Trials Act a formal written charge, to which the defendant may plead as to an indictment, had best be presented. (Code 767). REGINA v. INGLIS, 25 N. S. R. 259.

10. **Committal to Gaol a Pre-Requisite to Consent of Accused** — JURISDICTION — SURRENDER BY BAIL.]—To entitle an accused to elect for speedy trial before a county Judge's criminal court, there must be a "committal to gaol for trial" by the magistrate who held the preliminary examination, and an order by the county court Judge when the accused is surrendered by his bail will not suffice to confer jurisdiction, even with the consent of the accused. REGINA v. SMITH, 3 C. C. C. 467, 31 N. S. R. 468.

11. **County Judge's Criminal Court (Ont.)** — REVIEW OF PROCEEDINGS — WRIT OF HABEAS CORPUS.]—The county Judge's criminal court (Ontario) is a court of record and after conviction the pro-

ceedings are reviewable only under a writ of error and cannot be the subject of investigation under a writ of habeas corpus. REGINA v. MURRAY, 1 C. C. C. 452, 28 O. R. 549.

12. **Election** — CHANGING CHARGE FROM THAT FOR WHICH COMMITTED — CODE SECS. 767-773.]—When once a prisoner has elected to be tried by a Judge he has no power of re-election. A Judge should not, against the wish of a prisoner, give his consent to any charge being preferred against the prisoner, unless it is clear that, while it may be more formally or differently expressed, it is substantially the same charge as the one on which he was committed for trial, and on which he has been brought before a Judge, and elected to be tried without a jury. R. v. CARRIERE, 6 C. C. C. 7, 14 Man. L. R. 52, 22 Occ. N. 187.

13. **Election** — TIME FOR — JURISDICTION — CODE SEC. 767.]—1. Where the accused is not in custody at the time a trial bill is found by the grand jury, or where the indictment is filed of record, or when he has been arraigned and pleaded, the forum becomes fixed and jurisdiction is determinately established in the court where the record is filed. The case cannot then be removed from it, even on consent of the Crown and the accused, since consent cannot confer jurisdiction in criminal prosecutions. 2. Sub-sec. 5 of Code sec. 767 applies to cases for re-election only, and not to a case where the accused has never been brought up for election, and elected against a speedy trial in the first instance. 3. A bill of indictment cannot however, be preferred against a person in custody, who has legally elected for speedy trial. R. v. KOMIENSKY, 6 C. C. C. 524.

14. **Election** — BREAKING GAOL — RECAPTURE — INDICTMENT ON NEW CHARGE — CODE SEC. 766-767.]—The accused was committed for trial for forgery; he elected for speedy trial. Before the trial came on he escaped. The grand jury at the assize found true bills for forgery and prison breach against him. On his re-arrest he desired to be tried by speedy trial :—Held, the Judge had no jurisdiction to try the offence of prison breach by speedy trial, since he was never committed for trial on that charge. R. v. HEBERT, 10 C. C. C. 288.

15. **Election before Crown Prosecutor** — R. S. NOVA SCOTIA (1900), c. 195 — SEC. 590-766.]—1. By sec. 1 of cap. 195 R. S. N. S. (1900), the prosecuting counsel appointed by the Attorney-General has power to conduct all criminal business which must be held to include all process necessary to bring the prisoner to trial and to make his election is one necessary act in the proceedings; the Act therefore would be wide enough to permit of the prosecuting counsel taking an election under Code sec. 766. R. v. JORDEY, 9 C. C. C. 497.

16. **Election** — ESSENTIALS OF ELECTING AND RE-ELECTING.]—It is a special and imperative requirement for the exercise of the exceptional right of electing for and obtaining a speedy trial, that the accused be in custody awaiting trial; and to give an accused the right to re-elect he must have been in custody awaiting trial when he elected to be tried by jury. REX v. KOMIENSKY, 7 C. C. C. 27, Q. R. 12 K. B. 463.

17. **Indictable Offences** — ELECTION AS TO MODE OF TRIAL — TIME FOR — WAIVER — PLEA OF INDICTMENT.]—Four accused persons, after a preliminary inquiry, were committed for trial for conspiracy to defraud, but no bill of indictment was preferred to the grand jury on such charge. A bill of indictment, however, was preferred by the Crown counsel, with the written consent of the Judge presiding in the court of King's bench, charging the four accused and two other persons with conspiracy. Two additional bills were preferred against the six persons, charging them with having committed other indictable offences, and the grand jury declared the three bills well founded and returned them into court as true bills. The accused, when arraigned, severally pleaded not guilty on the three indictments, but when the court was proceeding to fix a day for the trials, they moved that an order be made allowing them to be taken before a Judge of sessions to declare their option for speedy trial on the indictments :—Held, that 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, a preliminary inquiry must have been made, depositions giving evidence concerning the offence charged must have been taken, and the

accused must have been committed for trial, Rex v. Gibson, 4 Can. Crim. Cas. 451, followed. 2. Whenever an accused party neglects to take the necessary steps to elect for a trial without a jury in the special court for speedy trials, before an indictment is found against him and returned into Court, his plea to such indictment will be conclusive against him, and he cannot afterwards elect for a speedy trial without a jury: Regina v. Lawrence, 1 Can. Crim. Cas. 295. His plea to the indictment conclusively and exclusively fixes the form. REX v. WENER, Q. R. 12 K. B. 320.

18. **Indictable Offences** — ELECTION AS TO MODE OF TRIAL — TIME FOR — INDICTMENT.]—When, in the ordinary course, an indictment has been found for an offence with which a person who is either in custody or on bail, has been charged, and such indictment has been returned into court and has been filed of record, the court is regularly and exclusively seized of the case, and the accused has no right then to ask for a speedy trial and to remove the case and the indictment and the other documents forming the record to the special court for speedy trials. REX v. KOMIENSKY, Q. R. 12 K. B. 463.

19. **Indictable Offences** — ELECTION AS TO MODE OF TRIAL — TIME FOR — INDICTMENT.]—After an indictment has been found against the accused by the grand jury, it is too late for him to elect for speedy trial without a jury under part LIV. of the Criminal Code. Jurisdiction to hold a speedy trial is strictly limited by the terms of s. 765 of the Criminal Code, and such jurisdiction is only conferred where the accused has been committed to gaol for trial, or is otherwise in custody awaiting trial on the charge against him. REX v. KOMIENSKY, Q. R. 12 K. B. 329.

20. **Indictable Offences** — JURISDICTION OF DISTRICT MAGISTRATE — CRIMINAL CODE.]—A district magistrate has no jurisdiction to try a person for an indictable offence, except in the special cases provided by law, viz., the indictable offence must be one which is triable before the general or quarter sessions of the peace; the accused person must have been committed or bailed for trial, and be in actual custody awaiting trial; the sheriff must have notified the district magistrate in writing that such person is so confined, stating his name and the nature of the charge preferred against him; the district magistrate must thereupon have caused the prisoner to be brought before him, and, after having obtained the depositions on which the prisoner was committed, state and describe to him the offence with which he is charged, and the prisoner must then have consented to be tried before such district magistrate without a jury. The jurisdiction to hold a speedy trial is strictly limited by the terms of ss. 765-767, Criminal Code, and the conditions specified in these sections must be strictly complied with, on pain of absolute nullity, even where the accused has expressly declared that he consents to stand his trial before the district magistrate who convicted him. REX v. BRECKENRIDGE, Q. R. 12 K. B. 474.

21. **Indictment Preferred by Grand Jury Without a Preliminary Inquiry** — RIGHT OF ELECTION — CODE SECS. 765-767.]—Defendants were indicted by the grand jury direct on several charges of conspiracy, without having had any preliminary hearing, or having been committed for trial by a justice of the peace. Pleas of not guilty were entered by the defendants, but when the court wished to fix days for the several trials, they collectively moved that no day be fixed, but that they be brought before the county Judge to elect for speedy trials:—Held, 1. That a waiver of the constitutional right of trial by jury, can be made only in following out a compliance with the statutory provisions in that behalf; the only cases under the Code in which accused persons are allowed speedy trials, are those in which an information is laid before a justice, charging an indictable offence triable in the general or quarter sessions of the peace, in which a preliminary inquiry has been made, depositions taken, and a commitment for trial taken place. The charge in the speedy trials court must therefore be that for which he has been committed. 2. The right to prefer a subsequent charge given by sec. 773 with the consent of the Judge, at the speedy trial permits the preferment only of a charge cognate to the one for which the accused was committed or admitted to bail. When however the charge has been drawn without sufficient accuracy, a proper or appropriate charge may be

substituted or preferred, but it must not be totally distinct or wholly disconnected from the one on which the commitment was made. 3. If no election has been made before an indictment is returned founded on the facts disclosed in the preliminary depositions, the accused has not statutory right to demand a speedy trial; but if he has elected for speedy trial before an indictment has been preferred, he cannot be deprived of that right, because an indictment has subsequently been preferred by the grand jury. In such case the indictment would have to be quashed. 4. When a bill of indictment has been preferred by direction of the Attorney-General or the court without a preliminary inquiry or a committal for trial, the accused has no statutory right to elect a speedy trial or choose any other forum than the one in which the indictment was found. R. v. WENER, 6 C. C. C. 406.

22. **Jurisdiction** — COUNTY JUDGE'S CRIMINAL COURT — COMMITTED FOR TRIAL.]—The jurisdiction of the county court Judge's criminal court extends only to persons "committed to jail for trial" on the charges specified in the provisions of the Code relating to speedy trial of indictable offences and where an accused is admitted to bail under Section 601, and the sureties under section 910 render the accused, he is in custody for want of sureties and not committed for trial under section 596. REGINA v. JAMES GIBSON, 3 C. C. C. 451, 29 N. S. R. 4.

23. **No Re-election upon Granting of New Trial.**]—Where a prisoner has been tried by a jury and a new trial directed by the court of appeal, he cannot re-elect to be tried by speedy trial without a jury. THE KING v. COOTE, 7 C. C. C. 92, 10 B. C. R. 285.

24. **No Right to Re-elect for Trial by Jury.**]—The accused having elected for speedy trial before the county court Judge under Part LIV. Crim. Code, the Judge has no discretionary power to allow the accused to withdraw the election made, and obtain trial by jury. REX v. KEEFER, 5 C. C. C. 122, 2 O. L. R. 572.

25. **Right of Accused to** — AFTER BAIL BY MAGISTRATE.]—A person accused of an indictable offence who has been admitted to bail under Code, s. 601, by the magistrate before whom he is brought for preliminary examination upon the charge, has a right to a speedy trial under Code, s. 765, to the same extent as if the magistrate had committed him for trial under s. 506. REGINA v. LAWRENCE, 5 B. C. R. 160.

26. **Subsequent Re-Election.**]—A prisoner who has been brought up for election as to the mode of his trial under the speedy trial sections of the Criminal Code, and has elected to be tried by a jury, may afterwards re-elect to be tried speedily before a Judge. REGINA v. PREVOST, 4 B. C. R. 326.

27. **Territorial Jurisdiction.**] — The Speedy Trials Act, 51 Vict., c. 47 (D.), is not a statute conferring jurisdiction but is an exercise of the power of Parliament to regulate criminal procedure. By this Act jurisdiction is given "to any Judge of a county court" to try certain criminal offences :—Held, that the expression "any Judge of a county court" in such Act, means any Judge having, by force of the Provincial law regulating the constitution and organization of county courts, jurisdiction in the particular locality in which he may hold a "speedy trial". The statute would not authorize a county court Judge to hold a "speedy trial" beyond the limits of his territorial jurisdiction without authority from the Provincial Legislature so to do. IN RE COUNTY COURTS OF BRITISH COLUMBIA, 21 S. C. R. 446.

28. **Waiver of Preliminary Investigation** — DEPRIVATION OF RIGHT TO SPEEDY TRIAL.]—The defendant on a charge of theft had waived the usual preliminary investigation and was thereupon committed for trial. Upon arraignment, the prisoner had consented to speedy trial. It was held that as no depositions had been taken and the offence charged could not be subsequently stated to the accused from them, the accused could not make an election effectual to confer jurisdiction on the county court Judge's criminal court. REX v. ALFRED McDOUGALL, 8 C. C. C. 234, 8 O. L. R. 30.

29. **Witness** — 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 s. 222, Criminal Procedure Act, and his deposition taken on the preliminary examination refused. REGINA v. MORGAN, 2 B. C. R. 329.

30. **Trial on Offences other than those Committed on.**]—The Canadian Criminal Code sections providing for speedy trials give power to try the prisoner for offences other than those for which he was committed. R. v. WRIGHT, 2 C. C. C. 88.

31. **Venue** — SENTENCE — WARRANT OF COMMITMENT — VALIDITY OF — CODE SEC. 609.]—By Code sec. 609 indictment includes any record, and the venue (which means the place where the crime has been committed) need not be stated in the warrant, if noted in the margin thereof. Where the offence was not one for which local description was required, the jurisdiction of the court was sufficiently shown by the marginal note. It is not necessary to specify the time of commitment of a sentence in the warrant. SMITHEMAN v. THE KING 9 C. C. C. 17, 35 C. S. C. R. 490.

32. **Warrant of Commitment** — VENUE — CODE SEC. 609.]—1. It is immaterial whether the name of the locality or place of the commission of the crime is stated in the warrant of commitment in case of a conviction under the speedy trials provisions, if the name of the county is stated in the margin. R. v. SMITHEMAN, 9 C. C. C. 17, 35 C. S. C. R. 490.

IV. SUMMARY TRIAL.

1. **Amendment of Charge** — RIGHT TO RE-ELECT.]—Where an amendment is made to the charge against the prisoner, on which the prisoner had elected for summary trial, it is necessary to have the prisoner's consent to the amended or substituted charge being tried summarily. REX v. WALSH & LAMONT, 8 C. C. C. 101, 7 O. L. R. 149.

2. **Assault** — PENALTY — RIGHT TO JURY — NOTIFICATION BY MAGISTRATE'S CLERK.]—Section 785 of the Criminal Code, 1892, as re-enacted by 63 & 64 V., c. 46, gives to the police magistrate of a city or town power to impose the same punishment for a common assault as could be imposed upon a person convicted on an indictment, when he has decided to treat it as an indictable offence and is proceeding under the summary trials part of the Code. 2. The magistrate may ask the question provided for by s. 786 of the Code through the mouth of his clerk. REX v. RIDEHAUGH, 23 Occ. N. 236, 14 Man. L. R. 434.

3. **Assault** — INFORMATION FOR INDICTABLE OFFENCES — CONVICTION FOR COMMON ASSAULT — JURISDICTION OF MAGISTRATE — INDICTMENT — COURT — INFORMATION.]—The defendant was tried before a stipendiary magistrate on an information charging him with committing an assault upon J. F., causing bodily harm. The accused having consented to be tried summarily, in accordance with s. 787 of the Code, was tried and convicted of a common assault only :—Held, that s. 713 of the Code enabled the magistrate to convict of the common assault under s. 265, notwithstanding that the information was for an indictable offence under s. 262, as the latter section includes common assault. 2. That the contention that s. 713 only applies to indictments, "counts" being the only word used, was disposed of by s. 3 (b) of the Code, where it is provided that the expressions "indictment" and "counts", respectively, include information and presentment, as well as indictment, and also any plea, replication, or other pleading, and any record. 3. That independently of the statute the conviction was good. The Queen v. Oliver, 30 L. J. 12, and The Queen v. Taylor, L. R. 1 C. C. R. 194, followed. REX v. COOLEN, 36 N. S. Reps. 510.

4. **Assault** — SEC. 262 — SUMMARY TRIAL BY CONSENT — NO BAR TO CIVIL ACTION.]—A conviction on a complaint for an assault causing actual bodily harm, such charge being heard summarily by a magistrate on consent of the accused is not a bar to a civil action for damages for assault. NEVILLS v. BALLARD, 1 C. C. C. 434, 28 O. R. 588.

5. **Assault and Theft** — SUMMARY TRIAL — POLICE MAGISTRATE — ELECTION — NEXT COURT FOR JURY TRIAL — AMENDMENT — FRESH ELECTION — NEW TRIAL.] —In order to give a police magistrate

jurisdiction to try an indictable offence, namely, a charge of assault and robbing prosecutor of 30c., not triable summarily by the magistrate except with the prisoner's consent, the magistrate, in putting the prisoner to his election to be tried before him or by jury, must expressly name the court at which the charge can probably be soonest heard; and it is immaterial that the election is made by counsel representing the prisoner; Maclaren, J. A., dissenting. Regina v. Cockshott, (1898) 1 Q. B. 582, followed. After the election of the prisoner to be tried summarily on such charge, and after the magistrate has entered upon the trial thereof, he has no power to amend the indictment so as to cause a further charge to be preferred against the prisoner, unless the prisoner is again put on his election, and consents to be so tried. REX v. WALSH, 24 Occ. N. 82, 7 O. L. R. 149, 2 O. W. R. 222, 3 O. W. R. 31.

6. **Assault** — PUNISHMENT.]—Where a prisoner consented to be tried summarily for common assault, and upon conviction was sentenced to one year's imprisonment with hard labor, it was held that a magistrate upon a summary trial has power to impose the same punishment for a common assault as could be imposed upon a person convicted on indictment. REX v. RIDEHAUGH, 7 C. C. C. 340, 14 Man. L. R. 434, 23 Occ. N. 236.

7. **By Consent** — RIGHT OF APPEAL — CRIM. CODE SEC. 783 (a).]—A party convicted of theft under section 783 (a) by a police magistrate who tried summarily with consent of accused, has no right of appeal. Section 808 excludes an appeal under sections 879-884. REGINA v. EGAN, 1 C. C. C. 112, 11 Man. L. R. 134.

8. **Civil Action** — ASSAULT — SEC. 783 — BAR TO CIVIL ACTION.]—A conviction for assault under sec. 783 (c) on a summary trial with consent of accused, is a bar to any civil action for damages for such assault. HARDIGAN v. GRAHAM, 1 C. C. C. 437.

9. **Civil Action** — CRIM. CODE SECS. 783, 786 — SUMMARY TRIAL NO BAR TO CIVIL ACTION.]—A conviction for aggravated assault tried under sec. (c) 783 Crim. Code with consent of the accused is not a bar to a civil action for damages for assault and battery. CLARKE v. RUTHERFORD, 5 C. C. C. 13, 2 O. R. 206.

10. **Civil Action** — INDICTABLE OFFENCE — SUMMARY TRIAL — NO BAR TO CIVIL ACTION.]—A conviction for an indictable offence which was tried summarily by the election of the accused is no bar to a civil action for damages for assault. NEVILLS v. BALLARD, 1 C. C. C. 434, 28 O. R. 588.

11. **Consent of Accused** — RESISTING PEACE OFFICER.]—A prosecution brought under sec. 144 of the Crim. Code, where the punishment is prescribed on summary trial for the offence of resisting a peace officer in the execution of his duty, is also subject to secs. 783 and 786 of the Code, the latter section directing that the summary trial is conditional upon the consent of the accused. REGINA v. CROSSEN, 3 C. C. C. 152, 19 C. L. T. 347.

12. **Crim. Code Sec. 785 (2), 1900 Amendment** — MAGISTRATE — COURT OF GENERAL SESSIONS.]—The amendment sub-sec. 2 added to Crim. Code 785 the Amendment Act of 1900 extending the jurisdiction to magistrates, confers jurisdiction on magistrates in provinces where there is no court of general sessions. RE VANCINI (No. 2), 8 C. C. C. 228, 34 C. S C. R. 621.

13. **Distinguished from Summary Conviction** — BAWDY HOUSE.]—Where a conviction of an inmate of a house of ill-fame is made under part LV. of the Code, the trial is a summary trial of an indictable offence, and not a summary conviction. REX v. ROBERTS, 4 C. C. C. 254, 21 Occ. N. 314.

14. **Election** — ABSENCE OF PRELIMINARY INQUIRY BY MAGISTRATE — NEGLECT TO INFORM PRISONER OF TIME OF NEXT SITTING — CONVICTION — INVALIDITY — DISCHARGE. REX v. WILLIAMS, (B. C.), 2 W. L. R. 410.

15. **Election** — AMENDMENT OF CHARGE — SUBSTITUTION OF EARLIER DATE FOR OFFENCE — SEDUCTION OF GIRL UNDER SIXTEEN — NECESSITY FOR NEW ELECTION. REX v. LACELLE, 6 O. W. R. 911, 11 O. L. R. 74.

16. **Election** — ABSENCE OF ACCUSED.] —A prisoner charged with theft waived preliminary examination, and was committed for trial. Upon then being arraigned before the junior Judge of the

county court he consented to be tried by "the said Judge without a jury" :—Held, that s. 767 of the Criminal Code, as amended by 63 & 64 V., c. 64 (D.), contemplates an election to be tried in a certain way and not necessarily by the Judge before whom the election is made; that the election in question having been given in a limited form was void; and that the senior Judge could not proceed with the trial of the accused :—Held, also, that a person accused, by waiving preliminary investigation and thus accepting committal without depositions taken, foregoes his right to a speedy trial and cannot make an election effectual to confer jurisdiction :—Held, further, that, unless in the case of misconduct rendering it impracticable to continue the proceedings in his presence, or at his request and with the permsision of the court, the trial of a person accused of felony cannot proceed in his absence. IN RE REX v. McDOUGALL, 24 Occ. N. 324, 8 O. L. R. 30, 3 O. W. R. 750.

17. **Election** — DEPOSITIONS DISCLOSING MORE SERIOUS OFFENCE.]—Where the depositions disclose an offence which could not have been disposed of by speedy trial, the prisoner will not be allowed to elect for speedy trial if the Crown intends to lay the more serious charge even though he is committed for an offence which may be disposed of by speedy trial. REX v. PRESTON, 11 B. C. R. 159, 1 W. L. R. 17.

18. **Election** — WITHDRAWAL.]—A prisoner who, on being brought before the county Judge's criminal court, elects to be tried summarily by the Judge, cannot be allowed afterwards to withdraw his election; no provision therefor having been made in the Criminal Code, ss. 762-781, such as the defendant to s. 767 with regard to elections to be tried by a jury. REX v. KEEFER, 21 Occ. N. 585, 2 O. L. R. 572.

19. **Evidence** — CONSENT — FELONY — MISDEMEANOUR. REX v. FOX, 2 O. W. R. 728.

20. **Inmate of House of Ill-Fame** — JURISDICTION OF STIPENDIARY MAGISTRATE — PUNISHMENT.]—The defendant was convicted before a stipendiary magistrate of being an inmate of a house of ill-fame, and sentenced to imprisonment at hard labour for one day, and to forfeit and pay $60, and in default of payment to a further term of imprisonment for six months, unless the sum should be sooner paid. She was arrested and imprisoned under a warrant issued on the conviction, and an application was made for a writ of habeas corpus to test the legality of her imprisonment :—Held, that the conviction was under part LV. of the Criminal Code, and the trial was a summary trial of an indictable offence, and not a summary conviction. The jurisdiction is given by s. 783 (f) of the Code. The following section makes the jurisdiction of the magistrate absolute in respect of the particular offence, and independent of the consent of the person charged. Section 788 fixes the punishment which the magistrate on summary trial of indictable offences may inflict upon the person convicted in respect of all the crimes mentioned in s. 783, except theft and attempt to commit theft, the punishment for which is provided by s. 787. The punishment inflicted was not in excess of that authorized by the Code, and is not limited by that prescribed by s. 208. The jurisdiction of the magistrate to try the offence charged under Part LV. of the Code, and to inflict the punishment which he awarded was quite clear, and no ground had been shewn for the discharge of the prisoner. REX v. ROBERTS, 21 Occ. N. 314.

21. **Jurisdiction** — DISORDERLY HOUSE — GAMING — CODE SEC. 783.]—A magistrate has, under Code sec. 783 (f), a charge of keeping a disorderly house, as by sec. 196 a common gaming house is included in the term disorderly house; and the rule of construction noscitur a sociis does not apply to sec. 783 (f). R. v. FLYNN, 9 C. C. C. 550, 1 W. L. R. 388.

22. **Jurisdiction** — OBSTRUCTING A PEACE OFFICER — CONSENT OF ACCUSED NOT NECESSARY TO SUMMARY TRIAL — CRIMINAL CODE, ss. 144, 783-6.]—A person charged with obstructing a peace officer in the execution of his duty may be tried summarily by a magistrate without the consent of the accused. REX v. JACK, 9 B. C. R. 19.

23. **Jurisdiction of Magistrate** — CHARGE OF OBSTRUCTING PEACE OFFICER.]—A person charged with obstructing a peace officer in the execution of his duty may be tried summarily by a magistrate with-

out the consent of the accused. Semble, a magistrate is not bound to inform an accused of the exact sections of the Code under which the proceedings are being taken. The Queen v. Crossen (1899), 3 C. C. C. 152, not followed. REX v. NELSON, 8 B. C. R. 110.

24. **Jurisdiction of Magistrate** — CHARGE OF KEEPING DISORDERLY HOUSE.]—A magistrate has absolute jurisdiction under s. 785, s.-s. (f), and s. 784 of the Criminal Code, to hear and determine in a summary way a charge of keeping a disorderly house. The exercise of the summary jurisdiction is, under those sections, and under s. 791, discretionary with the magistrate, and he may commit the accused for trial, and a mandamus will not lie to compel him to hear and determine the charge summarily. The meaning of the term "disorderly house" in s. 783, s.-s. (f), must be taken from its definition in s. 198, and not from the common law. RE FARQUHAR MACRAE, 4 B. C. R. 18.

25. **Jury** — ELECTION — WITHDRAWAL — REFUSAL OF JUDGE TO DISPENSE WITH JURY.]—The N. W. T. Act, R. S. C., 1886, c. 50, s. 67, (section substituted by 54 & 55 V., c. 22, s. 9), provides that "When the person is charged with any other criminal offence the same shall be tried, heard, and determined by the Judge, with the intervention of a jury of six; but in any such case the accused may, with his own consent, be tried by a Judge in a summary way and without the intervention of a jury" :—Held, that in the event of the accused electing to be tried by a judge alone, the Judge is not bound so to try the case, but may insist upon the intervention of a jury. So held, where the accused was first tried with the intervention of a jury, who disagreed, and upon a second trial coming on withdrew his first election and elected to be tried by the Judge alone. REGINA v. WEBSTER, 2 Terr. L. R. 236.

26. **Justices** — PRACTICE — DIFFERENT OFFENCES CHARGED — HEARING OF SECOND INFORMATION BEFORE DECISION ON FIRST — CONVICTION ON SECOND — LEGALITY OF CONVICTION.]—Where a magistrate is trying two distinct but similar informations against an accused, a conviction by him in the second case is not invalid merely because he reserved his decision in the first case, which he afterwards dismissed, until the conclusion of the second case. The Queen v. McBerney (1897), 3 C. C. C. 339, distinguished. REX v. SING, 9 B. C. R. 254.

27. **Justice of Peace** — JURISDICTION — CRIM. CODE PART LV.]—A conviction on a summary trial under Part LV. of the Code by a justice of the peace not having the power of two justices is illegal as being made without jurisdiction. REX v. COT , 8 C. C. C. 393, 25 Que. S. C. 33.

28. **Keeping Bawdy House** — CONSENT — CONVICTION — DATE OF OFFENCE — DISCHARGE OF PRISONER — PROTECTION AGAINST ACTIONS.]—The defendant was summarily tried without her consent and convicted for keeping a disorderly house, that is to say, a common bawdy house, and was sentenced to pay a fine, and in default to be imprisoned at hard labour —Held, that, as she was charged and punished under the combined operation of ss. 198 and 958 of the Criminal Code, the magistrate could lawfully try her only after having obtained her consent under s. 785, and for want of such consent the conviction was wholly without jurisdiction and void. Nor could the proceedings be sustained under s. 783 (f) of the Code, nor under s. 207 (j). 2. The conviction, which was in the form QQ, declared that the defendant had been guilty of the offence "on the 21st day of April, A.D., 1901, and on divers other days and times during the month of April" —Held, that it was bad, as it might be read as indicating the commission of an offence subsequent to the laying of the information (the date of which was the 29th of April) and including the date of the conviction (the 30th April.) Ex. p. Kennedy, 27 N. B. Reps. 493, followed. 3. Held, also, following In re Moore, 33 C. L. J. 400, that where relief from imprisonment was given as in this case under R. S. N. S. 1900, c. 181, the Judge can only protect from civil action, at the instance of the applicant, in respect to the imprisonment from which she is discharged the keeper of the common gaol in which she was detained. REX v. KEEPING, 21 Occ. N. 508.

29. **Obstructing Peace Officer** — CONSENT.]—A person charged with obstructing a peace officer in the execution of his duty may, without his own consent, be tried summarily by the magistrate. REX v. JACK, 9 B. C. R. 19.

30. **Obstructing Peace Officer** — CONSENT OF ACCUSED.]—Held, that a person charged with obstructing a peace officer in the execution of his duty may be tried summarily by a magistrate without the consent of the accused. See Criminal Code, ss. 144, 783-6. Semble, that a magistrate is not bound to inform an accused of the exact sections of the Code under which the proceedings are being taken. REGINA v. CROSSEN, 3 Can. Crim. Cas. 152, not followed. REX v. NELSON, 21 Occ. N. 456, 8 B. C. R. 110.

31. **Perjury** — CONSENT OF ACCUSED.]—A magistrate has jurisdiction to adjudicate summarily upon a charge of perjury where the accused consents. REX v. BURNS, 4 C. C. C. 330, 1 O. L. R. 336.

32. **Police Magistrate for County** — JURISDICTION IN CITY UNDER PROVINCIAL STATUTE (N. B.).]—A police magistrate for a county with certain jurisdiction within a city therein, is not a police magistrate of the city within the meaning of Part LV. of the Code, and has no jurisdiction to hold a summary trial thereunder. REX v. BENNER, 8 C. C. C. 398, 35 N. B. R. 632.

33. **Powers of Magistrates** — THEFT — ATTEMPT TO COMMIT — DESCRIPTION OF OFFENCE — WARRANT OF COMMITMENT — ABSENCE OF — ORDER FOR FURTHER DETENTION.]—It is competent for a magistrate upon a summary trial before him of a prisoner charged under s. 783 (a) of the Criminal Code with having committed theft, to convict him of the offence of attempting to commit it provided for in s.-s. (b). The offence of theft from the person is sufficiently described in popular language as picking the pocket of a person. To authorize the detention of a person under a conviction there should be a warrant of commitment; but where there was none, and the conviction itself was lodged with the gaoler as his authority for the detention, there being an offence proved and a proper conviction for the offence, and no merits on the part of the prisoner, the Judge before whom the prisoner was brought upon the habeas corpus exercised the power conferred by s. 752 of the Code, and directed that the prisoner should be further detained and that the convicting magistrate should issue and lodge with the gaoler a proper warrant. REX v. MORGAN, 21 Occ. N. 533, 2 O. L. R. 413. (Affirmed by the Court of Appeal, 20th November, 1901, 21 Occ. N. 583.)

34. **Theft exceeding $10.00** — CODE SEC. 782-789.]—Prisoner had been convicted by an acting stipendiary magistrate for theft of $150 on application for certiorari :—Held, 1. Conviction was bad because the magistrate did not hold the preliminary enquiry required by sec. 789 for the purpose of enabling him to decide whether or not the case should be disposed of summarily. 2. That the magistrate having omitted to inform the accused as to the probable time when the first court would sit to enable him to be tried by jury, the prisoner was not given the requisite information to make his election. R. v. WILLIAMS, 10 C. C. C. 330, 2 W. L. R. 410.

35. **Without Consent of Prisoner** — CONVICTION — DISCHARGE FROM GAOL — SECOND PROSECUTION. REX v. KENNEDY, 1 O. W. R. 31.

See also APPEAL — ELECTION — EVIDENCE — INDICTMENT — JURY — NEW TRIAL — PRISONER.

ULTRA VIRES.

See APPEAL — CERTIORARI — CONSTITUTIONAL LAW — CONVICTION — JURISDICTION — JUSTICE OF THE PEACE — MUNICIPAL CORPORATIONS.

UNCERTAINTY.

See CERTIORARI — CONVICTION — HABEAS CORPUS — INFORMATION — INDICTMENT.

UNLAWFUL ASSEMBLY.

1. **Street Meeting** — CONVICTION — PROOF OF OBSTRACTION — VAGRANCY.]—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. 2. Article 207 of the Crimina

Code does not apply to persons of good character, but is intended to apply to loose, idle, and disorderly persons ("aux vagabonds, aux desoeuvres, ou aux debauches.") REX v. KNEELAND, Q. R. 11 K. B. 85, 6 C. C. C. 81.

UNNATURAL OFFENCE.

1. **Boy under 14** — UNNATURAL OFFENCE — CODE 10.]—As at common law, so since the Code, a boy under 14 cannot commit rape, or an unnatural offence on the person of another boy. Per Ritchie, J., Code 10 refers to mental ability to distinguish between right and wrong, not to physical ability to commit crime. But if the offence was committed against the will of the other boy, the prisoner was guilty of an assault under Code 260. REGINA v. HARTLEN, 30 N. S. R. 317.

VACCINATION.

See MUNICIPAL CORPORATIONS.

VAGRANCY.

1. **Certiorari** — GROUNDS — EVIDENCE NOT REDUCED TO WRITING — CODE SEC. 208-590-1.]—Under the practice in British Columbia, it is not necessary to state the grounds on which a motion for rule nisi is made, any further than the form prescribes by the Crown office rules, where that is adhered to. A conviction for vagrancy is bad where the evidence is not reduced to writing, or any record kept of the proceedings. R. v. McGREGOR, 10 C. C. C. 313.

2. **Conviction Bad in not Disclosing Specific Offence Charged.**]—Under a charge of vagrancy, a conviction is bad if it does not specify the particular facts relied upon by the prosecution as constituting the vagrancy. REX v. McCORMACK, 7 C. C. C. 135, 9 B. C. R. 497.

3. **Conviction** — EVIDENCE — HABEAS CORPUS — DISCHARGE.]—REX v. WILLIAM COLLETTE, 6 O. W. R. 746, 10 O. L. R. 718.

4. **Gaming** — LIVING BY MEANS OF — EVIDENCE — SUFFICIENCY OF.]—R. S. C., c. 157, s. 8, provides that "All persons who,......(k) have no peaceable profession or calling to maintain themselves by, but who do, for the most part, support themselves by gaming,......are loose, idle or disorderly persons, or vagrants, within the meaning of this section. 2. Every loose, idle or disorderly person or vagrant shall, upon summary conviction ......be deemed guilty of a misdemeanour and shall be liable, etc. D. was convicted before a police magistrate under above section, and sentenced to imprisonment. On an application for a writ of habeas corpus :—Held, that to support such a conviction there must be evidence of four distinct propositions : (1) That the accused had no peaceable profession or calling to support himself by; (2) that he practised gaming; (3) that, from this practice, he derived some substantial profits; (4) that these profits constituted the larger portion of his means of support and there being no reasonable evidence to warrant a finding of either the third or fourth proposition, it could not be assumed that because of the want of a visible occupation, and of the accused being greatly addicted to gambling, the latter contributed mainly to his support. The prisoner was discharged. REGINA v. DAVIDSON, 8 Man. L. R. 325.

5. **Gaming** — LIVING BY MEANS OF — FINDINGS OF FACT BY MAGISTRATE — EVIDENCE — SUFFICIENCY OF.]—H. was convicted before a police magistrate and sentenced to a term of imprisonment under R. S. C., c. 157, s. 8, upon a charge of having no peaceable occupation, profession or calling to maintain himself by, but who, for the most part, supported himself by gaming, and of being a loose, idle or disorderly person, and a vagrant. On an application for a writ of Habeas corpus :—Held, that the weight to be given to the evidence it was the function of the magistrate to decide, and the court could only search the evidence, ascertain what points might possibly be found in favor of the prosecution, and consider whether, if the magistrate found all of these against the accused, there was reasonable ground for inferring that the accused was guilty of the crime charged. Held, also, that, although the case was exceedingly weak, the court could not say that upon no view of the evidence

was it possible for the magistrate to make the inferences necessary to support the information, and the application was therefore refused. Held, also, that it was clearly quite an insufficient compliance with the statute for the prosecution to show merely that an accused party has no apparent occupation or calling, other than gaming, and that he gambles frequently and habitually. REGINA v. HERMAN, 8 Man. L. R. 330.

6. **Gaming** — NO VISIBLE MEANS OF SUPPORT — EVIDENCE.]—1. To convict an accused person on a charge of vagrancy for living without any visible means of support the evidence adduced tending to show that he supported himself by crime or gaming must be limited to the time mentioned in the information. 2. The mere fact of living without employment is not an offence against the law, if the person living without employment is able to do so, because he has sufficient means either belonging to himself or provided for him in a legitimate manner. The sons of persons possessing sufficient means to maintain them at home are not vagrants because they live without employment. The policy of the law against idlers is to protect the public against men who, while avoiding labor and employment, live by trickery and cheating and by preying upon other men. R. v. RILEY, 2 C. C. C. 128.

7. **Husband and Wife** — NON-SUPPORT — LIVING APART — CODE SEC. 207 (b).]—Where a wife has left her husband's home and lived away from him without his consent and without judicial authority or other valid reason, and she refuses to live with him notwithstanding the fact that he is ready and willing to receive her and support her according to his means and condition, his refusal, under such circumstances, to support and maintain her does not constitute an act of vagrancy under sec. 207, sub-sec. 6 of the Code. In order to constitute a wilful refusal or neglect on the part of the husband to maintain his wife while living apart from him, it is necessary that he should be under a legal obligation to do so. R. v. LECLAIR, 2 C. C. C. 297.

8. **Inmate of Bawdy House** — PUNISHMENT.]—A magistrate convicting an inmate of a house of ill-fame by summary trial under part LV. of the Code is not obliged to impose a less punishment than that prescribed under said part, because such inmate under the sections relating to vagrancy could be punishable on summary conviction, the punishment for vagrancy being lighter than that prescribed under part LV. THE KING v. ROBERTS, 4 C. C. C. 253, 21 Occ. N. 314.

9. **Money in Pocket** — PREVIOUS EMPLOYMENT — ASSOCIATE OF CRIMINALS — CODE SEC. 207.]—The evidence showed that the accused when arrested had in his possession $40 in money; that he had come to Brantford in company with a well know party of established criminal record; that though accused was never convicted he was an associate of pickpockets. There was, however, no evidence that he had no means of earning a livelihood. On the contrary, evidence for the defence showed he had been previously in employment up till two months prior to the arrest. :—Held, on motion for habeas corpus, that the evidence was insufficient to warrant a conviction. R. v. COLLETTE, 10 C. C. C. 286.

10. **Motion to Quash Conviction** — JURISDICTION OF SINGLE JUDGE — CERTIORARI — DISORDERLY HOUSE — INMATE — PLEADING GUILTY — FORM OF CONVICTION — LIKE EFFECT — SUMMARY CONVICTION OR SUMMARY TRIAL — PENALTY IMPOSED UNDER PART LV., CR. CODE — CONVICTION IN FORM UNDER PART LVIII. — CONSTRUCTION FAVOURING CONVICTION — CR. CODE, SECS. 207 (j) 208, 783 (f), 788 — FORMS WW, QQ.]—A single Judge in the Territories has jurisdiction under 54-55 Vic. (1891), c. 22, s. 7, ss. 2, to hear and determine applications to quash summary convictions, whether the convictions have been brought into court by certiorari or not. If the conviction has been returned to the clerk of the Supreme Court, by virtue of s. 102 of the N. W. T, Act, the issue of a writ of certiorari is unnecessary. The defendant pleaded guilty before a magistrate of being an inmate of a disorderly house, an offence punishable either under Part XV. of the Criminal Code (Vagrancy), where the fine or summary conviction is limited to $50, or under Part LV, (Summary Trials of Indictable Offences,) where the fine and costs together must not exceed $100. A fine $90, with $6.25 costs, was imposed, but the conviction was in the form WW prescribed under

Comparative Order of Code Sections, 1892.	Numerical Order of Code Sections, 1906.	Subject.	Whether varied in New Code.	Remarks.
Sec. 825		Proceedings when penalty not paid	Unaltered	Sec. 818 (1906)
" 826		Costs	"	" 819 "
" 827		Application of fines	Omitted	Repealed, 1900
" 828		Justice to certify costs	Unaltered	Sec. 820, 821 (1906)
" 829		Application	Altered	Compare Sec. 801 (1906)
" 830		No imprisonment in reformatory (Ont.)	Unaltered	Sec. 803 (1906)
" 831		Summary convictions not prevented	"	" 804 "
" 832		Order to pay costs	Altered	Compare Sec. 1044 (1906)
" 833		Costs in libel costs	Unaltered	Sec. 1045 (1906)
" 834		Imprisonment in default of costs	Altered	Compare Sec. 1046 (1906)
" 835		Taxation of costs	Unaltered	Sec. 1047 (1906)
" 836		Compensation for loss of property	Altered	Compare Sec. 1048 (1906)
" 837		Compensation to buyers of stolen goods	Unaltered	Sec. 1049 (1906)
" 838		Restitution of stolen property	"	" 1050 "
" 839	Sec. 705	" Justice," " Clerk of Peace," etc.	Altered	
" 840	" 706	Application	Unaltered	
" 841		Limitation of prosecution of offences		Compare Sec. 1142 (1906)
" 842 -1, 2	" 707	Hearing by one or more justices	"	
" 842 (3-6)	" 708	One justice may do all, etc.	"	
" 842 -8	" 709	Assault cases involving title to land	"	
	" 710	Information and complaint	Altered	Compare Sec. 845 (1892)
" 843	" 711	Compelling appearance	"	
" 844	" 712	Backing warrants	"	
" 845		Information and complaint	"	Compare Sec. 710 (1906)
" 846		Grounds for proceedings not objectionable	Unaltered	Sec. 723 (1906)
" 847		Immaterial variances	"	" 724 "
" 848	" 713	Summoning witnesses out of jurisdiction	"	
" 849	" 714	Hearing in open court	"	
" 850	" 715	Counsel for parties	Altered	
" 851	" 716	Evidence on oath	"	
" 852	" 717	Proving exemption, etc.	Unaltered	
" 853	" 718	Non appearance of accused	"	
" 854	" 719	Non appearance of prosecutor	Altered	

Comparative Order of Code Sections, 1892.	Numerical Order of Code Sections, 1906.	Subject.	Whether varied in New Code.	Remarks.
Sec. 855	Sec. 720	Proceedings when both appear	Altered	
" 856	" 721	Arraignment	"	
" 857	" 722	Adjournment	"	
	" 723	Non objectionable grounds	Unaltered	Sec. 846 (1892)
	724	Immaterial variance	"	Sec. 847 (1892)
	" 725	Proceedings not objectionable	"	Sec. 907 (1892)
" 858	" 726	Adjudication by justice	"	
" 859	" 727	Minute of conviction, etc.	Altered	
" 860	" 728	Penalties—Joint offenders	Unaltered	
" 861	" 729	First conviction	Altered	
" 862	" 730	Order of dismissal	"	
" 863	" 731	Service of minute of order	Unaltered	
" 864	" 732	Assault	"	
" 865	" 733	Dismissal of complaint for	"	
" 866	" 734	Release	"	
" 867	" 735	Costs on conviction	"	
" 868	" 736	Costs on dismissal	"	
" 869	" 737	Recovery of costs with penalty	"	
" 870	" 738	no penalty	"	
" 871		Fees	"	Sec. 770 (1906)
" 872 -1	" 739	Re convictions	"	
" 872 -3, 4	" 740	Fine and imprisonment	"	
" 872 -2	" 741	Warrants of distress and commitment	"	
" 873	" 742	Distress for costs	Altered	
" 874	" 743	Endorsement of distress warrant	Unaltered	
" 875	" 744	Justice may dispense with distress	"	
" 876	" 745	Proceedings pending execution	"	
" 877	" 746	Cumulative punishment	"	
" 878		Recognizances	Altered	Compare Secs. 1097 -1099 (1906)
	" 747	Payment on distress warrant	Unaltered	Sec. 901 (1906)
	" 748	Recognizance to keep peace	"	" 959 (1906)
" 879	" 749	Appeal Courts in provinces	Altered	Compare 6 & 7 Ed. VII. c. 45, Sec. 6
" 880 (a-d)	" 750	Procedure in appeal	"	
" 880 (e-g)	" 751	Hearing of appeal	"	
" 881	" 752	Appeal Court—Judge of fact and law	"	

Comparative Order of Code Sections, 1892.	Numerical Order of Code Sections, 1906.	Subject.	Whether varied in New Code.	Remarks.
Sec. 882	Sec. 753	Appeals on matters of form	Unaltered	
" 883	" 754	Judgment to be upon merits	"	
" 884	" 755	Costs on abandoned appeal	"	
" 885	" 756	Appeal failing	"	
" 886		Quashing conviction	Altered	Compare Sec. 1121 (1906)
" 887		No certiorari on appeal	Unaltered	Sec. 1122 (1906)
" 888	" 757	Conviction transmitted to Appeal Court	Altered	
" 889		Conviction not bad for irregularity	Unaltered	Sec. 1124 (1906)
" 890		List of irregularities	"	" 1125 "
" 891		No action against official, etc.	Altered	Compare Sec. 1131 (1906)
" 892		Security on motion to quash	Unaltered	Sec. 1126 (1906)
" 893		Enforcing recognizance on certiorari	Altered	Compare Sec. 1096 (1906)
" 894		Conviction not quashed for want of proof, etc.	"	Compare Sec. 1128 (1906)
" 895		Writ of procedures unnecessary, etc.	Unaltered	Sec. 1127 (1906)
" 896		Conviction not bad for want of form	Altered	Compare Sec. 1129 (1906)
" 897	" 758	Order as to costs	Unaltered	
" 898	" 759	Recovery of costs	"	
" 899	" 760	Abandoning appeal	"	
" 900 -1		" The Court "	"	Sec. 705 (b) (1906)
" " -2, 3	" 761	Statement by justice for review	"	
" " -4	" 762	Recognizance by applicant for case	"	
" " -5	" 763	Refusal to state a case	"	
" " -6	" 764	Compelling statement of case	"	
" " -7	" 765	Hearing of case	"	
" " -8, 9	" 766	Amendment of case	"	
" " -10,11	" 767	Enforcing confirmed conviction	Altered	
" " -12	" 768	No certiorari required	Unaltered	
" " -13		Recognizance	Altered	Compare Sec. 1097 (1906)
" " -14, 15	" 769	Statement precludes appeal	Unaltered	Compare Sec. 1151 (1906)
" 901		Payment on distress warrant	"	Sec. 747 (1906)
" 902		Returns re convictions	"	Secs. 1133, 1134-1, 2 (1906)
" 903		Publication of returns	Altered	Compare Sec. 1137 (1906)

Comparative Order of Code Sections, 1892.	Numerical Order of Code Sections, 1906.	Subject.	Whether varied in New Code.	Remarks.
Sec. 904		Actions for penalties	Unaltered	Sec. 1150 (1907)
" 905		Remedies saved	Altered	Compare Sec. 1134 -3 (1906)
" 906		Defective returns	Unaltered	Sec. 1138 (1906)
" 907		Proceedings not objectionable	"	" 725 "
" 908		Order in court	Altered	Compare Sec. 607 (1906)
" 909		Resistance to execu-execution	Unaltered	Sec. 608 (1906)
" 910		Render of accused by surety	"	" 1088 "
" 911		Bail after render	"	" 1089 "
" 912		Discharge of recognizance	"	" 1090 "
" 913		Render in court	"	" 1091 "
" 914		Sureties not discharged by arraignment	"	" 1092 "
" 915		Right to render not affected	"	" 1093 "
" 916		Entry of fines, etc., on record	Altered	Compare Secs, 1102 -1106 (1906)
" 917		List of persons defaulting under recognizance	Unaltered	Sec. 1094 (1906)
" 918		Proceedings on forfeited recognizance	"	" 1095 "
" 919		Recognizance not to be estreated		" 1108 "
" 920		Sheriff's sale of lands		" 1107 "
" 921		Discharge on security	Unaltered	Sec. 1109 (1906)
" 922		Discharge of forfeited recognizances	"	" 1110 "
" 923		Return of writ by sheriff	"	" 1111 "
" 924		Roll and return to be transmitted	"	" 1112 "
" 925		Proceeds paid to Minister of Finance	Altered	Compare Sec. 1101 (1906)
" 926		In Quebec province	"	Compare Secs.1087, 1113-1119(1906)
" 927		Application of fines	Unaltered	Sec. 1036 (1906)
" 928		Application of fines by order in Council	"	" 1037 "
" 929		Recovery of penalty	Altered	Compare Sec. 1038 (1906)
" 930		Limitation of actions	Altered	Compare Sec. 1141 (1906)
" 931		Punishment only after conviction	Unaltered	Sec. 1027 (1906)
" 932		Degrees in punishment	"	" 1028 "
" 933		Offences punishable under two Acts	Altered	Compare Sec. 15 (1906)

Comparative Order of Code Sections, 1892.	Numerical Order of Code Sections, 1906.	Subject.	Whether varied in New Code.	Remarks.
Sec. 934		Fine or penalty	Unaltered	Sec. 1029 (1906)
	Sec. 770	Fees	Unaltered	Sec. 871 (1892)
	" 771	" Magistrate," etc.	Altered	Compare Sec. 782 (1892)
	" 772	Application of part	"	Compare Sec. 808 (1892)
	" 773	Summary trials—Jurisdiction	"	Compare Sec. 783 (1892)
	" 774	Absolute jurisdiction of magistrate	Unaltered	Sec. 784-1 (1892)
	" 775	....in Montreal and Quebec	"	Sec. 784-2 (1892)
	" 776	Absolute jurisdiction —certain provinces	Altered	Compare Sec. 784-3 (1892)
	" 777	Summary trial	Altered "	Compare Sec. 785 (1906)
	" 778	Arraignment of accused	"	Compare Sec. 786 (1906)
	" 779	Accused a minor	Added	
	" 780	Theft under $10	Altered	Compare Sec. 787 (1892)
	" 781	Other offences	"	Compare Sec. 788 (1892)
	" 782	Offense over $10	"	" 789 "
	" 783	Punishment on plea of guilty	Unaltered	Sec. 790 (1892)
	" 784	Magistrate proceeding summarily or not	"	" 791 "
	" 785	Jury trial stated on warrant	Altered	Compare Sec. 792 (1892)
	" 786	Full defence	Unaltered	Sec. 793 "
	" 787	Proceeding in open court	"	" 794 "
	" 788	Procuring witnesses	"	" 795 "
	" 789	Summons to witness	"	" 796 "
	" 790	Dismissal of charge	"	" 797 "
	" 791	Effect of conviction	"	" 798 "
	" 792	Certificate of dismissal etc.	"	" 799 "
	" 793	Filing result of hearing	Altered	Compare Sec. 801 (1892)
	" 794	Evidence of conviction	Unaltered	Sec. 802 (1892)
	" 795	Restitution of property	"	" 803 "
	" 796	Remand by justice	"	" 804 "
	" 797	Appeal in certain cases	Altered	Compare Sec. 782 (a, v.) (1892)
	" 798	Provisions not applicable	"	Compare Sec. 808 (1892)
	" 799	Forms of conviction	"	Compare Sec. 807 (1892)
	" 800	Juvenile offenders—definitions	"	Compare Sec. 809 (1892)
	" 801	Application of this part	Altered	Compare Sec. 829 (1892)

Comparative Order of Code Sections, 1892.	Numerical Order of Code Sections, 1906	Subject.	Whether varied in New Code.	Remarks.
	Sec. 802	Theft under 16	Unaltered	Sec. 810 (1892)
	" 803	No imprisonment in reformatory (Ont.)	"	" 830 "
	" 804	Summary conviction not prevented	"	" 831 "
	" 805	Procuring appearance of accused	Altered	Compare Sec. 811 (1892)
	" 806	Remand	Unaltered	Sec. 812 (1892)
	" 807	Accused to elect trial	Altered	Compare Sec. 813 (1892)
	" 808	When not summary trial	"	Compare Sec. 814 (1892)
	" 809	Summons to witness	Unaltered	Sec. 815 (1892)
	" 810	Binding over witness	"	" 816 "
	" 811	Warrant if witness disobeys summons	"	" 817 "
	" 812	Service of summons	"	" 818 "
	" 813	Discharge	Altered	Compare Sec. 819 (1892)
	" 814	Form of conviction	Unaltered	Sec. 820-1 (1892)
	" 815	Further proceedings barred	"	" 821 "
	" 816	Filing conviction, etc.	"	" 822 "
	" 817	Restitution of property	"	" 824
	" 818	If penalty not paid	"	" 825 "
	" 819	Costs	"	" 826 "
	" 820	Costs to be certified by justice	"	" 828 "
	" 821	Order for payment	"	" " "
	" 822	Speedy trials—Application	Altered	Compare Sec. 762 (1892)
	" 823	" Judge," County Attorney," etc.	"	Compare Sec. 763 (1892)
	" 824	Judge—Court of record	Unaltered	Sec. 764 (1892)
	" 825	Offences triable by consent	Altered	Compare Sec. 765 (1892)
	" 826	Sheriff to notify judge of committal	Unaltered	Sec. 766 (1892)
	" 827	Arraignment	Altered	Compare Sec. 767 (1-3) (1892)
	" 828	Demand of jury	"	Compare Sec. 767 -4, 5 (1892)
	" 829	Persons jointly accused	Unaltered	Sec. 768 (1892)
	" 830	Re-election	Altered	Compare Sec. 769 (1892)
	" 831	Continuance before another judge	Unaltered	Sec. 770 (1892)
	" 832	Election after committal	Unaltered	Sec. 771 (1892)
	" 833 1,2	Trial of accused	"	" 772 "
	" " -3	Record	Added	
	" 834 -1	Preferring other charges	Unaltered	Sec. 773 (1892)

Comparative Order of Code Sections, 1892.	Numerical Order of Code Sections, 1906.	Subject.	Whether varied in New Code.	Remarks.
	Sec. 834 -2	Trial of	Added	
	" 835	Powers of judge	Altered	Compare Sec. 774 (1892)
	" 836	Bail on trial by judge alone	"	Compare Sec. 775 (1892)
	" 837	Bail on jury trial	Unaltered	Sec. 776 (1892)
	" 838	Adjournment	"	" 777 "
	" 839	Powers of amendment	Altered	Compare Sec. 778 (1892)
	" 840	Recognizance under Sec. 692	Unaltered	Sec. 779 (1906)
	" 841	Attendance of witnesses	"	" 780 "
	" 842	Compelling	"	" 781 "
	" 843	Indictments need not be on parchment	"	" 608 "
	" 844	Statement of venue	"	" 609 "
	" 845	Heading of indictment	Altered	Compare Sec. 610 (1906)
	" 846	Indictment for pretending to send money, etc.	Unaltered	Sec. 618 (1892)
	" 847	Indictment for treason	"	" 614 "
	" 848	Indictment for theft by tenant	"	" 625 "
	" 849	Indictment against accessories	"	"627 "
	" 850	Indictment re P.O. employees	"	" 624-3 "
	" 851	Indictment charging previous convictions	"	" 628 "
	" 852 (1-3)	Statement of offence	"	" 611 (1-3) (1892)
	" " -4	Form	Added	
	" 853	Details	Unaltered	Sec. 611 (4-6)(1892)
	" 854	Offences in alternative	Altered	Compare Sec. 612-1 (1892)
	" 855	Omissions	"	Compare Sec. 613 (1892)
	" 856	Joinder of counts, etc.	Unaltered	Sec. 626–1 (1892)
	" 857	Count treated as separate indictment	Altered	Compare Sec. 626 (2-4) (1892)
	" 858	Order for trial Separately	"	Compare Sec. 626 (2-4) (1892)
	" 859	Order of particulars	"	Compare Secs. 613 615, 616 (1892)
	" 860	Copy for accused	Unaltered	Sec. 617 (1892)
	" 861	Libel	Altered	Compare Sec. 615 (1892)
	" 862	Indictment for perjury	"	Compare Sec. 616-1 (1892)
	" 863	Indictment for false pretence	"	Compare Sec. 616-2 (1892)
	" 864	Sufficiency of statements	Unaltered	Sec. 619 (1892)

Comparative Order of Code Sections, 1892.	Numerical Order of Code Sections, 1906.	Subject.	Whether varied in New Code.	Remarks.
	Sec. 865	Property of Corporation	Unaltered	Sec. 620 (1892)
	" 866	Stealing ores, etc.	"	Part of Sec. 621 (1892)
	" 867	Offences re postcards	"	Sec. 622 (1892)
	" 868	Theft by public employees	"	" 623 "
	" 869	Offences re mails	"	" 624–1, 2 (1892)
	" 870	Perjury before judge	Added	
	" 871	Who may prefer indictment	Altered	Compare Sec. 641 (1892)
	" 872	Crown Counsel may	"	Compare Sec. 641 (1892)
	" 873	Attorney General may	"	Compare Sec. 641 (1892)
	" 873 A	Charge in Alta. and Sask.	Added	6 & 7 Ed. VII. c. 8
	" 874	Oath of witness before Grand Jury	Unaltered	Sec. 643 (1892)
	" 875	Administration of oath	"	" 644 "
	" 876	Names of witnesses to be endorsed	"	" 645 "
	" 877	Names of witnesses submitted to Grand Jury	"	" 646 "
	" 878	Fees for swearing witnesses	"	" 647 "
	" 879	Bench warrant	"	" 648 "
	" 880	Warrant by justice	"	" " "
	" 881	Committal or bail	"	" " "
	" 882	When accused is in jail for other offence	"	" " "
	" 883	Removal of prisoner for trial	Altered	Compare Sec. 650 (1892)
	" 884	Change of venue	Unaltered	Sec. 651-1 (1892)
	" 885	Transmission of record	"	" 651-2, 3 (1892)
	" 886	Order for removal	"	" 651-4 (1892)
	" 887	Order in Que.	"	" 651-5 (1892)
	" 888	Offence entirely in one province, etc.	Altered	Compare Sec. 640 (1892)
	" 889	Variance—Amendments	Unaltered	Sec. 723 (1892)
	" 890	Adjournment	"	" " "
	" 891	Amendment to be endorsed on record	Altered	Compare Sec. 724 (1892)
	" 892	Application to amend	"	Compare Sec. 612 (1892)
	" 893	Amendment when property wrongly laid	"	Compare Sec. 621 (1892)
	" 894	Accused's right to inspect depositions	Unaltered	Sec. 653 (1892)
	" 895	Copy of indictment	"	" 654 "
	" 896	Copy of depositions	"	" 655 "
	" 897	Delivery of documents re treason	"	" 658 "

Comparative Order of Code Sections, 1892.	Numerical Order of Code Sections, 1906.	Subject.	Whether varied in New Code.	Remarks.
	Sec. 898	Objecting to indictment	Unaltered	Sec. 629 (1892)
	" 899	No plea in abatement	"	" 656 "
	" 900	Plea	Altered	Compare Sec. 657 (1892)
	" 901	Time to plead	Unaltered	Sec. 630 (1892)
	" 902	Time to plead in Ont.	"	" 757 "
	" 903	When defendant appears by Attorney	"	" 758 "
	" 904	Delay	"	" 759, (1892)
	" 905	Special pleas	"	" 631-1, 2 (1892)
	" 906	....pleaded together	"	" " -3, 4 (1892)
	" 907	Issue on pleas	"	" " -5, 6 (1892)
	" 908	Identity of charges	Altered	Compare Sec. 632 (1892)
	" 909	Aggravation	Unaltered	Sec. 633 (1892)
	" 910	Plea of justification to libel	"	" 634 "
	" 911	Proving truth of libel	"	" " "
	" 912	Publication by order, etc.	Added	Sec. 6 & 7, R.S. 1886, c. 163.
	" 913	Stay of proceedings	"	Sec. 6 & 7, R.S. 1886, c. 163
	" 914	Record of conviction	Unaltered	Sec. 726 (1892)
	" 915	Form of record	"	" 725 "
	" 916	Corporation appearing by Attorney	"	" 635 "
	" 917	Removing indictment	"	" 636 "
	" 918	Notice to corporation	"	" 637 "
	" 919	Proceedings on default	"	" 638 "
	" 920	Absence of defendant corporation	"	" 639 "
	" 921	Qualification of juror	Altered	Compare Sec. 662 (1892)
	" 922	Jury de med. ling. abolished	Unaltered	Sec. 663 (1892)
	" 923	Mixed juries in Que.	"	" 664 "
	" 924	Mixed juries in Man.	"	" 665 "
	" 925	Challenging array	"	" 661-1 (1892)
	" 926	Trial of ground of challenges	"	" 666-2 (1892)
	" 927	Calling panel	Altered	Compare Sec. 667 (1-3) (1892)
	" 928	Calling jurors stood by	Unaltered	Sec. 667-4 (1892)
	" 929	Jury to try indictment	"	" 667(5-7)(1892)
	" 930	"Voir dire"	"	" 668-7 "
	" 931	Other grounds for trying challenge	"	" " -8 "
	" 932	Peremptory challenges	"	" " (1-3) "
	" 933	.....by crown	"	" " 9, 10 "
	" 934	Libel cases	"	" 669 (1892)
	" 935	Challenges for cause	"	" 668-4, 5 (1892)
	" 936	In writing	"	" 668-6 (1892)

Comparative Order of Code Sections, 1892.	Numerical Order of Code Sections, 1906.	Subject.	Whether varied in New Code.	Remarks.
	Sec. 937	Mixed jury	Unaltered	Sec. 670 (1892)
	" 938	Joining challenges	"	" 671 "
	" 939	Ordering tales	"	" 672 "
	" 940	No trial on coroner's inquisition	"	" 642 "
	" 941	Arraignment of prisoner	"	" 652 "
	" 942	Full defence	"	" 659 "
	" 943	Presence of accused	"	" 660 "
	" 944	Prosecutor's right to sum up	Altered	Compare Sec. 661 (1892)
	" 945	Continuous trial	"	Compare Sec. 673 (1892)
	" 946	Comfort of jurors	Unaltered	Sec. 674 (1892)
	" 947	Libel	"	" 705 "
	" 948	Polygamy	"	" 706 "
	" 949	Full offence charged	"	" 711 "
	" 950	Attempt charged	"	" 712 "
	" 951	Part of offence only proved	"	" 713 "
	" 952	Concealing birth of child—murder	"	" 714 "
	" 953	Stealing cattle	Altered	Compare Sec. 714A (1892)
	" 954	Trial of joint receivers	Unaltered	Sec. 715 (1892)
	" 955	Trial for coinage offences	"	" 718 "
	" 956	Verdict in libel cases	"	" 719 "
	" 957	Destroying counterfeit coin	"	" 721 "
	" 958	View	"	" 722 "
	" 959	Jury retiring	Altered	Compare Sec. 727 (1892)
	" 960	Jury discharged	Unaltered	Sec. 728 (1892)
	" 961	Verdict, etc., on Sunday valid	"	" 729 "
	" 962	Stay of proceedings	"	" 732 "
	" 963	Previous offence charged	"	" 676 "
	" 964	Evidence of character	"	" " "
	" 965	Saving of court's power	"	" 675 "
	" 966	Insanity at time of offence	"	" 736 "
	" 967	Insanity at time of arraignment	"	" 737 "
	" 968	Discharge of insane person	"	" 739 "
	" 969	Custody of insane persons	"	" 740 "
	" 970	Insanity of prisoner	"	" 741 "
	" 971	Attendance of witnesses	"	" 677 "
	" 972	Compelling attendance of witnesses	"	" 678 "

Comparative Order of Code Sections, 1892.	Numerical Order of Code Sections, 1906.	Subject.	Whether varied in New Code.	Remarks.
	Sec. 973	Warrant against witness	Unaltered	Sec. 678A (1892)
	" 974	Witness beyond jurisdiction	"	" 679 "
	" 975	Subpœna disobeyed	"	" " "
	" 976	Courts of provinces auxiliary, etc.	"	" " "
	" 977	Witness a prisoner	Altered	Compare Sec. 680 (1892)
	" 978	Admissions taken on trial	Unaltered	Sec. 690 (1892)
	" 979	Perjury—Certificate of former trial	"	" 691 "
	" 980	Evidence of counterfeit	"	" 692 "
	" 981	Evidence of advertising counterfeits	"	" 693 "
	" 982	Proof of previous conviction	"	" 694 "
	" 983	Evidence of child murder	"	" 697 "
	" 984	Proof of age	Altered	Compare Sec. 701A (1892)
	" 985	Gaming instruments in house	"	Compare Sec. 702 (1892)
	" 986	Other evidence of gaming house	"	Compare Sec. 703 (1892)
	" 987	Evidence of stock gambling	Unaltered	Sec. 704 (1892)
	" 988	Evidence of stealing ores, etc.	"	" 707 "
	" 989	Evidence—cattle brand, etc	Altered	Compare Sec. 707A (1892)
	" 990	Evidence of property in timber	"	Compare Sec. 708 (1892)
	" 991	Evidence of enlistment	"	Compare Sec. 709 (1892)
	" 992	Evidence of fraudulent marks on mdse.	"	Compare Sec. 710 (1892)
	" 993	Proceedings against receivers	Unaltered	Sec. 716 (1892)
	" 994	" "	"	" 717 "
	" 995	Evidence under commission of person ill	"	" 681 "
	" 996	Evidence in presence of prisoner	"	" 682 "
	" 997	Evidence out of Canada	"	" 683 "
	" 998	Deposition of sick person, etc.	Altered	Compare sec. 686 (1892)
	" 999	Deposition on preliminary enquiry	"	Compare Sec. 687 (1892)
	" 1000	Depositions for other offences	Unaltered	Sec. 688 (1892)

Comparative Order of Code Sections, 1892.	Numerical Order of Code Sections, 1906.	Subject.	Whether varied in New Code.	Remarks.
	Sec. 1001	Statement before justice	Unaltered	Sec. 689 (1892)
	" 1002	Witness must be corroborated	Altered	Compare Sec. 684 (1892)
	" 1003	Child not under oath must be corroborrated	Unaltered	" 685 "
	" 1004	Question to accused before sentence	"	" 733-1 (1892)
	" 1005	Sentence sustained by one count	"	" 626-5 "
	" 1006	Sentence when venue changed	"	" 733-4 "
	" 1007	Motion in arrest of judgment	"	" " -2, 3 "
	" 1008	Death sentence on pregnant woman	"	" 730 (1892)
	" 1009	Jury de vent. inspic. abolished	"	" 731 "
	" 1010	Judgment not to be stayed etc.	Altered	Compare Sec. 734 (1892)
	" 1011	Impeaching verdict	Unaltered	Sec. 735 (1892)
	" 1012	Appeal in trade conspiracy case	Added	52 Vict., c. 41, s. 5
	" 1013	Appeal re other offences	Altered	Compare Sec. 742 (1892)
	" 1014	No proceedings in error	"	Compare Sec. 742 (1892)
	" 1015	Appeal from refusal to reserve	Unaltered	Sec. 744-1, 2 (1892)
	" 1016	Granting appeal	"	" " (3-5) "
	" 1017	Evidence sent to Appeal Court	"	" 745 "
	" 1018	Powers of Appeal Court	"	" 746-1 "
	" 1019	Conviction standing	"	" " "
	" 1020	Only one count affected	"	" 746-2, 3 "
	" 1021	Leave to apply for new trial	"	Sec. 747 (1892)
	" 1022	Minister of Justice ordering new trial	"	" 748 "
	" 1023	Suspended sentence on appeal	Altered	Compare Sec. 749 (1892)
	" 1024	Appeal to S.C.R.	"	Compare Sec. 750 (1892)
	" 1025	No appeal to Privy Council	Unaltered	" 751 "
	" 1026	" Court "	Altered	Compare Sec. 974 (1892)
	" 1027	Punishment only after conviction	Unaltered	Sec. 931 (1892)
	" 1028	Degrees of punishment	"	" 932 "
	" 1029	Fine or penalty	"	" 934 "
	" 1030	Outlawry abolished	"	" 962 "
	" 1031	Solitary confinement	"	" 963 "

Comparative Order of Code Sections, 1892.	Numerical Order of Code Sections, 1906.	Subject.	Whether varied in New Code.	Remarks.
	Sec. 1032	Deodand	Unaltered	Sec. 964 (1892)
	" 1033	Attainder	"	" 965 "
	" 1034	Conviction of public official	Altered	Compare Sec. 961 (1892)
	" 1035	Fines	Altered	Compare Sec. 958 (1892)
	" 1036	Fines—Appropriation of	Unaltered	Sec. 927 (1892)
	" 1037	Fines—Appropriation by municipality	"	" 928 "
	" 1038	Recovering penalty by civil action	Altered	Compare Sec. 929 (1892)
	" 1039	Disposal of forfeited goods	Added	51 Vict. c. 41, s. 15
	" 1040	Costs	"	" " 16
	" 1041	Application of fines re coinage offences	"	R.S.C. (1886), c. 167, s. 34
	" 1042	Application of fines re deserters	"	R.S.C. (1886), c. 169, s. 9
	" 1043	Application of fines re cruelty to animals	"	R.S.C. (1886), c. 172, s. 7
	" 1044	Costs paid by convicted	Altered	Compare Sec. 832 (1892)
	" 1045	Costs in libel case	Unaltered	Sec. 833 (1892)
	" 1046	Imprisonment in default of costs	Altered	Compare Sec. 834 (1892)
	" 1047	Taxation of costs	Unaltered	Sec. 835 (1892)
	" 1048	Compensation for loss of property	"	" 836 "
	" 1049	Compensation for stolen property	"	" 837 "
	" 1050	Restitution of stolen property	"	" 838 "
	" 1051	Punishing offence not capital	"	" 950 "
	" 1052	Other cases	"	" 951 "
	" 1053	Second offence	"	" 952 "
	" 1054	Shortening maximum term	"	" 953 "
	" 1055	Cumulative punishments	"	" 954 "
	" 1056	Imprisonment in common gaol	"	" 955 (1-3)(1892)
	" 1057	.... hard labor	Altered	Compare Sec. 955–5, 6 (1892)
	" 1058	Recognizance to keep peace	"	Compare Sec. 958–1 (1892)
	" 1059	No sureties	"	Compare Sec. 960 (1892)
	" 1060	Whipping	Unaltered	Sec. 957 (1892)
Sec. 935	" 1061	Punishment same on verdictor confession	"	
" 936	" 1062	Form of death sentence	"	

Comparative Order of Code Sections, 1892.	Numerical Order of Code Sections, 1906.	Subject.	Whether varied in New Code.	Remarks.
Sec. 937	Sec. 1063	Death sentence to be reported to Sec. State	Unaltered	
" 938	" 1064	Confinement of prisioner under death sentence	"	
" 939	" 1065	Place of execution	"	
" 940	" 1066	Persons required at execution	"	
" 941	" 1067	Persons who may be	"	
" 942	" 1068	Death certificate	"	
" 943	" 1069	Deputies may act	"	
" 944	" 1070	Inquest	"	
" 945	" 1071	Place of burial	"	
" 946	" 1072	Certificate for Sec. State	"	
" 947	" 1073	Omissions not to invalidate	"	
" 948	" 1074	Other procedure	"	
" 949	" 1075	Rules re execution	"	
" 950		Punishing offence not capital	"	Sec. 1051 (1892)
" 951		Punishment in other cases	"	" 1052 "
" 952		Punishment—second offence	"	" 1053 (19 6)
" 953		Shortening maximum imprisonment	"	" 1054 "
" 954		Cumulative punishments	"	" 1055 "
" 955		Imprisonment in penitentiary, etc.	Altered 1057	Compare Secs. 1056 (1906)
" 956		Imprisonment in reformatory	Omitted	Compare R.S. 1906, c. 148, s. 29
" 957		Whipping	Unaltered	Sec. 1060 (1906)
" 958		Imprisonment and fine	Altered	Compare Sec. 1058 (1906)
" 959		Recognizance to keep peace	Unaltered	Sec. 748 (1906)
" 960		Not finding sureties	Altered	Compare Sec. 1059 (1906)
" 961		Conviction of public official	"	Compare Sec. 1034 (1906)
" 962		Outlawry abolished	Unaltered	Sec. 1030 (1906)
" 963		Solitary confinement	"	" 1031 "
" 964		Deodand	"	" 1032 "
" 965		Attainder	"	" 1033 "
" 966	" 1076	Pardon	"	
" 967	" 1077	Commutation of sentence		
" 968	" 1078	Sentence equal to pardon	"	
" 969	" 1079	Satisfying judgment	"	
" 970	" 1080	Royal prerogative of mercy	"	

Comparative Order of Code Sections, 1892.	Numerical Order of Code Sections, 1906.	Subject.	Whether varied in New Code.	Remarks.
Sec. 971	Sec. 1081	Conditional release	Unaltered	
" 972	" 1082	Conditions of release	"	
" 973	" 1083	Recognizance not kept	"	
	" 1084	Gov. in Council may remit fines	Added	
	" 1085	Costs	"	
	" 1086	" Cognizor "	Altered	Compare Sec. 926-4 (1892)
	" 1087	Sections re Quebec	"	Compare Sec. 926-4 (1892)
	" 1088	Render of accused by surety	Unaltered	Sec. 910 (1892)
	" 1089	Bail after render	"	" 911 "
	" 1090	Discharge of Recognizance	"	" 912 "
	" 1091	Render in court	"	" 913 "
	" 1092	Sureties not discharged by arraignment etc.	"	" 914 "
	" 1093	Right of surety	"	" 915 "
	" 1094	List of defaulting recognizants	"	" 917 "
	" 1095	Proceedings on forfeited recognizances	"	" 918 "
	" 1096	Recognizance on certiorari	Altered	Compare Sec. 893 (1892)
	" 1097	Certificate of default	"	Compare Secs. 805, 878, 900 (1892)
	" 1098	Certificate—transmission of (Ont.)	Unaltered	Sec. 878-3 (1892)
	" 1099	Certificate—transmission of (other provinces)	"	" " "
	" 1100	Manner of estreat	Altered	Compare Secs. 598--5, 900-13(1892)
	" 1101	Proceeds paid to Minister of Finance	"	Compare Sec. 925 (1892)
	" 1102	Entry of fines, etc., on record	Unaltered	Sec. 916-1 (1892)
	" 1103	Affidavit	"	" 916-5 (1892)
	" 1104	Rolls to be filed	Altered	" 916-2 (1892)
	" 1105	Rolls to be filed in court of General Session	Unaltered	" 916-3, 4 (1892)
	" 1106	Levy under writ	"	" " "
	" 1107	Sale of lands by sheriff	"	" 920 (1892)
	" 1108	Estreating recognizances not necessary	"	" 919 "
	" 1109	Discharge on security	"	" 921 "
	" 1110	Discharge of forfeited recognizances	"	" 922 "
	" 1111	Return of writ by sheriff	"	" 923 "

Comparative Order of Code Sections, 1892.	Numerical Order of Code Sections, 1906.	Subject.	Whether varied in New Code.	Remarks.
	Sec. 1112	Roll transmitted to Min. Finance	Altered	Compare Sec. 924 (1892)
	" 1113	Estreat on default	Unaltered	Sec. 926 -2 (1892)
	" 1114	Recognizance sent to Superior Court	"	" " (a) "
	" 1115	Entering judgment	"	" " (b) "
	" 1116	Fiat of Atty. Gen.	"	" " (c, d) "
	" 1117	Goods insufficient to satisfy judgment	"	" " (e-g) "
	" 1118	Process of recognizance	"	" " -5 "
	" 1119	Recovery by action	"	" " -3 (a, b) "
	" 1120	Further detention of accused	"	Sec. 752 (1892)
	" 1121	Affirmed conviction not to be quashed, etc.	Altered	Compare Sec. 886 (1892)
	" 1122	No certiorari on appeal	Unaltered	Sec. 887 (1892)
	" 1123	Conviction under Juvenile Offenders' Part	Altered	Compare Sec. 820-2 (1892)
	" 1124	Conviction removed by certiorari	Unaltered	Sec. 889 (1892)
	" 1125	Irregularities	"	" 890 "
	" 1126	Security on motion to quash	"	" 892 "
	" 1127	Writ of proceedings unnecessary	"	" 895 "
	" 1128	No quashing for want of proof of proclamation	Altered	Compare Sec. 894 (1892)
	" 1129	Conviction not bad for want of form	"	Compare Sec. 896 (1892)
	" 1130	Proceeding not quashed for want of form	"	Compare Sec. 800 (1892)
	" 1131	No action when conviction quashed	"	Compare Sec. 891 (1892)
	" 1132	Defects in form	Added	R.S.C. (1886). c. 151, s. 23
	" 1133	Returns re convictions, etc.	Unaltered	Sec. 902 (1-5) (1892)
	" 1134	Neglect to make returns	Altered	Compare Secs. 902-6, 7 and 905 (1892)
	" 1135	Return of certificates	Unaltered	Sec. 105-4 (1892)
	" 1136	Monthly returns	Added	R.S.C. (1886) c. 151, s. 12
	" 1137	Posting up returns	Altered	Compare Sec. 903 (1892)
	" 1138	Mistake not to vitiate return	Unaltered	Sec. 906 (1892)
	" 1139	Returns, Part XVII.	Altered	Compare Sec. 823 (1892)
	" 1140	Limitation of action	"	Compare Sec. 551 (1892)

Comparative Order of Code Sections, 1892.	Numerical Order of Code Sections, 1906.	Subject.	Whether varied in New Code.	Remarks.
	Sec. 1141	Limitation for penalty etc.	Altered	Compare Sec. 930 (1892)
	" 1142	Limitation for summary conviction	"	Compare Sec. 841 (1892)
Sec. 974		" Court "	"	Compare Sec. 1026 (1906)
" 975	" 1143	Action against person administering Crim. Law—Time and place	Unaltered	
" 976	" 1144	Notice of action	"	
" 977	" 1145	Defence	"	
" 978	" 1146	Payment into court	"	
" 979	" 1147	Judgment—costs	"	
" 980	" 1148	Other protecting acts	"	
	" 1149	Action under Part III	Added	R.S.C. (1886) c. 151 s. 24
	" 1150	Actions for penalties	Unaltered	Sec. 904 (1892)
	" 1151	Action against justice, etc.	Altered	Compare Sec. 900 (10) (1892)
	" 1152	Forms	"	Compare Secs. 541, 982 (1892)
Sec. 981		Statutes repealed		
" 982		Forms	Altered	Compare Sec. 1152 (1906)
" 983 -1		Application of Act	"	Compare Sec. 9 (1906)
" 983 -2		Not to affect H.M. forces	Unaltered	Sec. 8 (1906)

1892 Code.	1906 Code.	Subject.	Remarks.
A (Sec. 557)		Warrant to convey before justice in another county	Form 9 (Sec. 665) (1906)
B " "		Receipts given by justice to constable	" 10 (Sec. 666) (1906)
	1 (Sec. 629)	Information to obtain search warrant	" J (Sec. 569) (1892)
	2 (" 630)	Warrant to search	" I (Sec. 569) (1892)
C (" 558)	3 (" 654)	Information and complaint for an indictable offence	
D (" 560)	4 (" 656)	Warrant to apprehend charged, etc., on High Seas	
E (" 562)	5 (" 658)	Summons to person charged with indictable offence	
F (" 563)	6 (" 659)	Warrant in first instance, etc.	
G (" 563)	7 (" 660)	Warrant when summons is disobeyed	
H (" 565)	8 (" 662)	Endorsement in backing warrant	
I (" 569)		Warrant to search	Form 2 (Sec. 630) (1906)
J (" 569)		Information to obtain search warrant	" 1 (Sec. 629) (1906)
	9 (" 665)	Warrant to convey before justice in another county	" A (Sec. 557) (1892)
	10 (" 666)	Receipt given to constable by justice	" B (Sec. 557) (1892)
K (" 580)	11 (" 671)	Summons to witness	
L (" 582)	12 (" 673)	Warrant to witness disobeying summons	
	13 (Secs. 674, 842)	Conviction for contempt	Form PP (Sec. 781) (1892)
M (" 583)	14 (Sec. 675)	Warrant in first instance	
N (" 584)	15 (" 677)	Warrant to witness disobeying subpœna	
O (" 585)	16 (" 678)	Warrant of commitment of witness refusing to be sworn	
P (" 586)	17 (" 679)	Warrant remanding prisoner	
Q (" 587)	18 (" 681)	Recognizance of bail instead of remand, etc.	
R (" 598)		Certificate of non-appearance endorsed on recognizance	Form 73 (Sec. 1097) (1906)
S (" 590)	19 (" 682)	Deposition of witness	
T (" 591)	20 (" 684)	Statement of accused	
U (" 595)	21 (" 688)	Form of Recognizance where justice bound over to prosecute, etc.	
V (" 596)	22 (" 690)	Warrant of commitment	
W (" 598)	23 (" 692)	Recognizance to prosecute	
X (" 598)	24 (" 692)	Recognizance to prosecute and give evidence	

1892 Code.		1906 Code.	Subject.	Remarks.
Y	(Sec. 598)	25 (Sec. 692)	Recognizance to give evidence	
Z	(" 599)	26 (" 694)	Commitment for refusing to enter into recognizance	
AA	(" 599)	27 (" 694)	Order discharging witness when accused discharged	
BB	(" 601)	28 (" 696)	Recognizance of bail	
CC	(" 602)	29 (" 698)	Warrant of deliverance on bail for prisoner already committed	
DD	(" 607)	30 (" 704)	Gaoler's receipt to constable for prisoner	
EE	(Secs. 610, 626)		Headings of indictment	Form 63 (Secs. 845, 846) (1906)
FF	(Sec. 611)		Examples of manner of stating offences	" 64 (Sec. 852) (1906)
GG	(" 648)		Certificate of Indictment being found	" 65 (Sec. 879) (1906)
HH	(" 648)		Warrant to apprehend person indicted	" 66 (Sec. 880) (1906)
II	(" 648)		Warrant of commitment of person indicted	" 67 (Sec. 881) (1906)
JJ	(" 648)		Warrant to detain indicted person already in custody	" 68 (Sec. 882) (1906)
KK	(" 666)		Challenge to array	" 69 (Sec. 925) (1906)
LL	(" 668)		Challenge to poll	" 70 (Sec. 936) (1906)
MM	(" 767)		Form of Record when prisoner pleads not guilty	" 61 (Sec. 833) (1906)
NN	(" 767)		Form of Record when prisoner pleads guilty	" 60 (Sec. 827) (1906)
OO	(" 781)		Warrant to apprehend witness	" 62 (Sec. 842) (1906)
PP	(" 781)		Conviction for contempt	" 13 (Secs. 674, 842) (1906)
QQ	(" 807)		Conviction	" 55 (Sec. 799) (1906)
RR	(" 807)		Conviction upon plea of guilty	" 56 (Sec. 799) (1906)
SS	(" 807)		Certificate of dismissal	" 57 (Sec. 799) (1906)
TT	(" 819)		" "	" 58 (Sec. 813) (1906)
UU	(" 820)		Conviction	" 59 (Sec. 814) (1906)
VV	(" 859)	31 (" 727)	Conviction for penalty to be levied by distress, etc.	
WW	(" 859)	32 (" 727)	Conviction for penalty—imprisonment on default	
XX	(" 859)	33 (" 727)	Conviction when punishment is imprisonment	
YY	(" 859)	34 (" 727)	Order for payment levied by distress, etc.	
ZZ	(" 859)	35 (" 727)	Order for payment—imprisonment on default	

1892 Code.	1906 Code.	Subject.	Remarks.
AAA (Sec. 859)	36 (Sec. 727)	Other orders disobedience to which punishable by imprisonment	
BBB (" 862)	37 (" 730)	Form of order of dismissal of information	
CCC (" 862)	38 (" 730)	Form of certificate of dismissal	
DDD (" 872)	39 (" 741)	Distress warrant on conviction for penalty	
EEE (" 872)	40 (" 741)	Distress warrant on order for payment	
FFF (" 872)	41 (" 741)	Warrant of commitment on conviction for penalty, etc.	
GGG (" 872)	42 (" 741)	Warrant of commitment on order in first instance	
HHH (" 874)		Endorsement in backing distress warrant	Form 47 (Sec. 743) (1906)
III (" 872)	43 (" 741)	Constable's return to distress warrant	
JJJ (" 872)	44 (" 741)	Warrant of commitment for want of distress	
KKK (" 873)	45 (" 742)	Warrant of distress for costs upon order for dismissal	
LLL (" 873)	46 (" 742)	Warrant of commitment for want of distress	
MMM (" 878)		Certificate of non-appearance to be endorsed, etc	Form 73 (Sec. 1097) (1906)
NNN (" 880)		Notice of appeal	
	47 (" 743)	Endorsement in backing distress warrant	Form HHH (Sec. 874) (1892)
	48 (" 748)	Complaint by party threatened for sureties of peace	" WWW (Sec. 959((1892)
	49 (Secs. 748)	Form of Recognizance to keep peace	" XXX (Sec. 959)
	50 (Sec. 748)	Commitment in default of sureties	" YYY (Sec. 959) (1892)
OOO (" 880)	51 (" 750)	Recognizance to try appeal	
PPP (" 898)	52 (" 757)	Certificate of Clerk of Peace re Costs of Appeal	
QQQ (" 898)	53 (" 759)	Distress warrant for costs of appeal	
RRR (" 898)	54 (" 759)	Warrant of commitment for want of distress in lost case	
	55 (" 799)	Conviction	Form QQ (Sec. 807) (1892)
	56 (" 799)	Conviction upon plea of guilty	" RR (Sec. 807) (1892)
	57 (" 799)	Certificate of dismissal	" SS (Sec. 807)
	58 (" 813)	" "	" TT (Sec. 819) (1892)
	59 (" 814)	Conviction	" UU (Sec. 820) (1892)

1892 Code.	1906 Code.	Subject.	Remarks.
	60 (Sec. 827)	Form of Record when prisoner pleads guilty	Form NN (Sec. 767) (1892)
	61 (" 833)	Form of record when prisoner pleads not guilty	" MM (Sec. 767) (1892)
	62 (" 842)	Warrant to apprehend witness	" OO (Sec. 781) (1892)
	63 (Secs. 845, 846)	Headings of indictment	" EE (Secs. 610) 626) (1892)
	64 (Sec. 852)	Manner of stating offences	" FF (Sec. 611) (1892)
	65 (" 879)	Certificate of indictment	" GG (Sec. 648) (1892)
	66 (" 880)	Warrant to apprehend person indicted	" HH (Sec. 648) (1892)
	67 (" 881)	Warrant of commitment of person indicted	" II (Sec. 648) (1892)
	68 (" 882)	Warrant to detain person already in custody	" JJ (Sec. 648) (1892)
	69 (" 925)	Challenge to array	" KK (Sec. 666) (1892)
	70 (" 936)	Challenge to Poll	" LL (Sec. 668) (1892)
SSS (Sec. 902)		Justice's Return	" 75 (Sec. 1133) (1906)
TTT (" 916)		Writ of fieri facias	" 74 (Sec. 1105)
UUU (" 942)	71 (" 1068)	Certificate of execution of judgment of death	
VVV (" 942)	72 (" 1068)	Declaration of sheriff, etc.	
WWW (" 959)		Complaint by party threatened for sureties of peace	Form 48 (Sec. 748) (1906)
XXX (" 959)		Recognizance to keep peace	" 49 (Secs. 748, 1058) (1906)
YYY (" 959)		Commitment in default of sureties	" 50 (Sec. 748) (1906)
	73 (" 1097)	Certificate of non-appearance to be endorsed, etc.	" R (Sec. 589) (1892) and Form MMM (Sec. 878) (1892)
	74 (" 1105)	Writ of fieri facias	Form TTT (Sec. 916) (1892)
	75 (" 1133)	Justice's Return	Form SSS (Sec. 902) (1892)

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