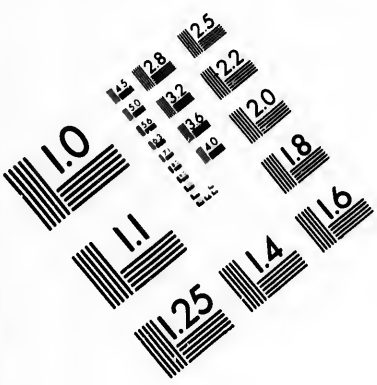


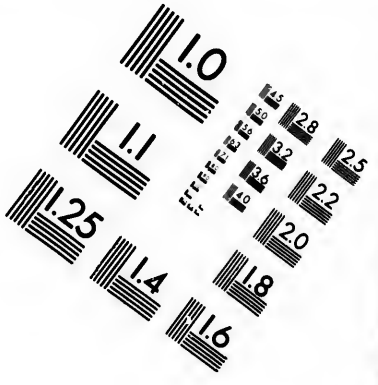
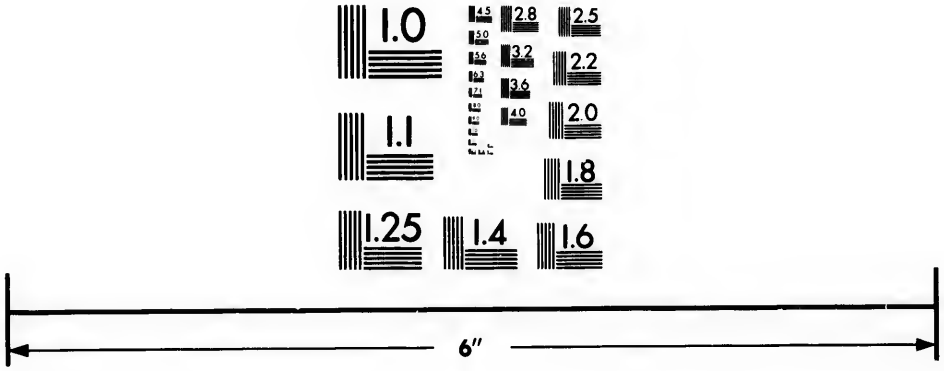


IMAGE EVALUATION TEST TARGET (MT-3)



Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

- ☐ Coloured covers/ Couverture de couleur
- ☐ Covers damaged/ Couverture endommagée
- ☐ Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/ Le titre de couverture manque
- ☐ Coloured maps/ Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- ☐ Bound with other material/ Relié avec d'autres documents
- ☐ Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distortion le long de la marge intérieure
- ☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- ☐ Additional comments:/ Commentaires supplémentaires:

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured pages/ Pages de couleur
- ☐ Pages damaged/ Pages endommagées
- ☐ Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- ☑ Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- ☐ Pages detached/ Pages détachées
- ☑ Showthrough/ Transparence
- ☐ Quality of print varies/ Qualité inégale de l'impression
- ☐ Includes supplementary material/ Comprend du matériel supplémentaire
- ☐ Only edition available/ Seule édition disponible
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/ Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
					✓						

The copy filmed here has been reproduced thanks to the generosity of:

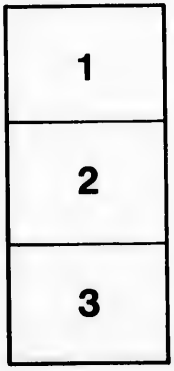
National Library of Canada

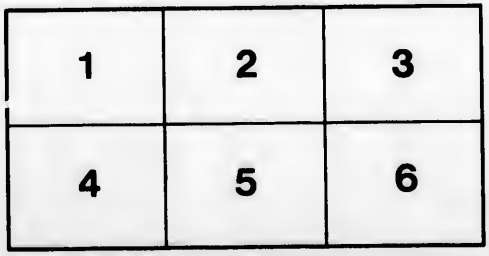
The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol → (meaning "CONTINUED"), or the symbol ▽ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:





L'exemplaire filmé fut reproduit grâce à la générosité de:

Bibliothèque nationale du Canada

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole → signifie "A SUIVRE", le symbole ▽ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.

32X

MAGISTRATES' MANUAL.

THE
MAGISTRATES' MANUAL

FOUNDED ON THE CRIMINAL CODE, 1892

AND THE VARIOUS ACTS RELATING TO THE

RIGHTS, POWERS, AND DUTIES OF JUSTICES OF THE PEACE

WITH A

SUMMARY OF THE CRIMINAL LAW.

THIRD EDITION.

REVISED, ENLARGED, AND IMPROVED

BY

S. R. CLARKE,

OF OSGOODE HALL, BARRISTER-AT-LAW,

Author of "The Criminal Law of Canada;" "The Insolvent Act, 1875," and Amending Acts.

LABOR OMNIA VINCIT.

TORONTO:
THE CARSWELL CO. (LTD.), LAW PUBLISHERS, ETC.
1893.

TORONTO:
PRINTED BY THE CARSWELL CO. LTD.
22, 30 Adelaide St. East.

PREFACE.

IN the preparation of the third edition of the Magistrates' Manual, it has been necessary to re-write or alter more than half the book. A large number of cases have been decided by the courts both in England and Canada since the publication of the last edition. These have all been noted in the text with the numerous changes in the statute law. Besides "The Criminal Code, 1892," re-models and materially alters this branch of our jurisprudence.

In the Code there is distinctly noticeable a tendency to assimilate the procedure in civil and criminal cases. In respect of a considerable number of offences a statute of limitations now runs against the Crown. There is a greater liberality in allowing appeals and a person convicted of treason or any indictable offence may be made liable for costs, and pecuniary compensation or satisfaction can be ordered in certain cases.

The accused is at liberty to admit any fact on his trial or to remain out of court on such terms as the judge thinks proper. The prisoner or the wife or husband of the prisoner may now give evidence and must answer questions tending to criminate, while the list of offences requiring two witnesses has been extended and includes various acts of seduction as well as procuring feigned marriages.

The difference between felony and misdemeanour has been abolished. Principals in the first and second degree and accessories before the fact, incur the same degrees of guilt and the old distinctions between these offenders have lost their importance. Larceny and embezzlement are known as theft, in which the characteristics of both offences are blended.

The definition of murder has been changed. It is now culpable homicide and homicide with provocation is manslaughter. Malice does not necessarily constitute an essential part of murder. An intentional killing without provocation or a killing resulting from an intention to inflict grievous bodily injury is murder, though, of course, malice is evidence to show the intent.

In what was formerly known as unlawful and malicious injuries malice is not the principal ingredient; a reckless act done without legal justification or excuse or colour of right, with knowledge that it will occasion the injury, is deemed to be done wilfully, and if so done, it becomes an indictable offence. In arson the burning must be wilful in the sense already indicated, and no intent to defraud is necessary, except where the offender sets fire to his own property.

The procedure before justices of the peace, whether on preliminary inquiry or in summary cases, has been somewhat simplified, and on the whole improved. Witnesses for the defence may be summoned in indictable cases, and the deposition of a witness must be read over to and signed by the witness and the justice, the accused, the witness and justice being all together at the time. There is also power to take depositions in shorthand, when signing is not required. The jurisdiction of the Sessions has been enlarged, and the law of venue abolished. The most striking change, however, in preliminary inquiries is the admission of evidence for the defence, and upon the whole evidence the magistrate must decide in committing for trial.

Informations may be in popular language. For instance, where the accused is charged with murder the information may allege that "A. murdered B., at , on "; or for theft, that "A. stole a sack of flour from a ship called the , at , on ."

In summary cases, the procedure for compelling the appearance of the accused or receiving informations compelling the attendance of witnesses, or the taking of evidence, is substantially the same as in the case of a preliminary inquiry. An option is given to the person aggrieved by a decision to appeal to the Sessions, as formerly, or to proceed by way of a stated case.

There are other fundamental alterations in the law and practice, though large portions of the Code are merely declaratory. The criminal Acts are differently arranged and the manner of stating offences has been altered. The change in the structure of the sections is so great that even those familiar with the subject will not in all cases recognize the former offences without an attentive study.

Parliament has made a step in advance in the enactment of the Code, though some trifling inaccuracies are apparent, and the appendix of acts and parts of acts not affected by the Code is likely to lead to confusion.

TORONTO, 12th October, 1893.

TABLE OF CONTENTS.

PAGE.

TABLE OF ABBREVIATIONS ix

TABLE OF CASES CITED xi

INTRODUCTORY CHAPTER 1

PROCEDURE ON PRELIMINARY INQUIRIES 43

SPEEDY TRIALS OF INDICTABLE OFFENCES 108

SUMMARY TRIAL OF INDICTABLE OFFENCES 122

TRIAL OF JUVENILE OFFENDERS FOR INDICTABLE OFFENCES 137

SUMMARY CONVICTIONS 145

SUMMARY OF THE CRIMINAL LAW OF CANADA, ALPHABETICALLY ARRANGED 305

TABLE OF ABBREVIATIONS.

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

TABLE OF CASES CITED.

A

PAGE

Abell, *Ex parte*..... 237, 356
Agnew v. Dobson 351
Agnew v. Stewart..... 36
Allan v. McHeffey 508
Allan v. McQuarrie..... 325
Allison, *Ex parte* 177
Appleton v. Lepper.....51, 52, 314, 356
Armstrong v. Bowes 327, 330
Armstrong v. McCaffrey..... 33, 4
Arnott v. Bradly..... 209
Arscott v. Lilley 318, 320, 333, 598
Attorney-General v. Siddon..... 336
Attorney-General v. Sillem 437
Atwood, q.t. v. Rosser 254

B

Bagley, q.t. v. Curtis..... ... 253, 256
Ball, q.t. v. Fraser 255
Balser, *Ex parte*..... 153
Barrett, *Re*..... 501
Barton v. Bricknell 316
Basebe v. Matthews..... 319
Basten v. Carew 152
Bates, *Re*..... 222
Bates v. Walsh..... 327
Baxter v. Hallett..... 328
Baylis v. Strickland 37
Beal, *Ex parte*..... 392
Beattie, *Ex parte*..... 203
Beatty v. Gillbanks..... 566
Beebe, *Re*..... 214
Begbie v. Levi 588
Belanger v. Gravel 36
Bennet v. Watson..... 81
Bessell v. Wilson..... 169
Bettersworth v. Hough 323, 330
Bibby, *Re*.....172, 179, 203, 514

PAGE

Birch v. Perkins 314
Bird v. Brian 498
Birmingham, *Ex parte*..... 409, 411
Bissonette v. Bornais..... 318
Black v. Besse 21
Blades v. Higgs..... 352
Blake v. Beech..... 158
Blossom, *Ex parte*..... 101, 105
Booth v. Shadgett..... 604
Boothroyd, *Re* 177
Bond v. Conmee 191, 320, 329, 483
Bond v. Evans 449
Bott v. Ackroyd 195, 315
Boulton v. Fitzgerald..... 436
Boyce, *Ex parte*..... 51, 54
Bowes v. Fenwick..... 362
Bradbury v. Hotten..... 392
Bradlaugh, *Ex parte*..... 179
Bradshaw v. Vaughton 200
Brash, q.t. v. Taggart 256
Bre[illegible] v. Robertson 333
Breakey v. Breakey 364
Brennan v. Hatelie..... 317
Brett v. Robinson 369
Briggs v. Spilsburg..... 319
Bright, Re..... 216
Brisson v. Lafontaine..... 351
Brittain v. Kinnaird..... 37
Brodeur, *Ex parte*..... 149
Brophy v. Ward 187
Bross v. Huber..175, 325, 328, 330, 332, 533
Brown, *Re*..... 224
Brown v. Gugy..... 533
Burgoyne v. Moffatt..... 99
Burney v. Gorham 315
Bustard v. Schofield..... 33
Butt, *Ex parte* 383
Butt v. Conant..... 482, 589
Byrne v. Arnold 78, 572

C

	PAGE
Cadby, *Ex parte*	439
Callaghan v. Society	395
Campbell, *Ex parte*	60
Campbell v. Flewelling	332
Campbell v. McDonald	28
Cannon, *Re* Oates v. Cannon	508
Cardinal v. City Montreal	183
Carignan, *Ex parte*	150, 153
Carmichael, *Re*	214
Carpenter v. Stanley	510
Carr v. Stringer	605
Carr v. Tannahill	508
Carswell v. Huffman	324
Cartier v. Burland	314
Case, *Ex parte*	200
Caudle v. Ferguson	340
Caudle v. Seymour	52, 314
Cave v. Mountain	157, 315
Cayen, *Ex parte*	38
Chaney v. Payne	181, 184, 185
Chapman, *Re*	42
Charles v. Greene	181
Charter v. Graeme	184
Cherrier, *Ex parte*	127
Chichester v. Hill	559
Chinamen v. Westminster	241
Church, *Ex parte*	60
Clapp v. Lawrason	249
Clarke, *Re*	35
Clarke v. Donnelly	505
Clarke v. Hague	395
Clee, *Re*	321
Cleland v. Robinson	126, 156
Clemens, q.t. v. Beemer	256
Clifford, *Ex parte*	486
Clissold v. Machell	36
Codd v. Cabe	355
Cohen v. Morgan	53
Col. Bk. of A. v. Willan	314
Coleman, *Ex parte*	482
Coleman, *Re*	585
Coles v. Coulter	159
Collier v. Hicks	84
Collins v. Hopwood	186
Collins v. Rose	322
Colville, *Ex parte*	9
Condell v. Price	324
Conklin, *Re*	77, 152, 161, 198, 199, 200
Connolly v. Adams	326
Connors v. Darling	13, 52, 85, 89
Conroy v. McKenny	102
Cooper v. Slade	368
Cope v. Barber	380
Cornwall v. R.	112, 113, 115, 585
Cornwall v. Sanders	38
Corriveau, *Ex parte*	105
Corsant, q.t. v. Taylor	254, 256
Costar v. Hetherington	200
Cotterill v. Lempriere	183
Courcelles v. City Montreal	356
Cousine, *Ex parte*	492
Coward v. Baddeley	357
Cox v. Coleridge	84
Crabb, q.t. v. Longworth	331
Crandall, q.t. v. Nott	6
Crawford v. Beattie	76, 85, 161, 314
Cripps v. Durden	588
Cronkhite v. Somerville	330
Cronyn v. Widder	505
Cross, *Ex parte*	93
Cross v. Wilcox	81
Crow, *Re*	149, 150
Cullen v. Trimble	175
Cummins v. Moore	324

D.

Daggett v. Catterns	362
Dalton, *Ex parte*	567
Daly, *Ex parte*	582
Darragh q.t. v. Paterson	254
Daubney v. Cooper	84
Davis v. Capper	37
Davis v. Justices	9
Dawson v. Fraser	214, 216, 591
Dawson v. Gill	177
Debaun, *Re*	444
De Gondouin v. Lewis	328
Delaney v. McNab	41, 248, 321
Dempsey v. Doherty	322
Denny v. Thwaite	521
Desnoyers v. Bayin	494
Dickerson v. Fletcher	36, 462
Dickson v. Crabb	214, 216
Dillon v. O'Brien	65
Dixon v. Wells	17, 54, 62, 153
Dobbyn v. Decow	314

PAGE

Doherty, *Ex parte*..... 229
Donaghue, *Ex parte*..... 567
Donaldson v. Haley..... 331
Donnelly, *Re*..... 183, 184
Donogh, q.t. v. Longsworth 254, 255
Donovan, *Ex parte*..... 519
Downing v. Capel..... 340
Drake, q.t. v. Preston..... 254, 255
Driscoll, *Ex parte*..... 29, 490
Dugdale v. R..... 535
Duncan v. Toms..... 165
Dunlop, *Ex parte*..... 497
Dunn, *Re*..... 590
Durnford v. Faireau..... 151
Durnford v. Ste Marie..... 151
Dwight v. Ellsworth..... 384
Dyson v. Mason..... 449

E.

Eagles, *Ex parte*..... 162, 177
Eastman v. Reid..... 183, 186
Eastwood v. Miller..... 362
Eggington v. Lichfield..... 215
Elliott's case..... 458
Elsee v. Smith..... 75
Evans v. Rees..... 81

F.

Falconbridge. q.t. v. Tourangeau. 148
Fawcett v. Fowles..... 37
Fennell v. Ridler..... 588
Ferens v O'Brien..... 470
Ferguson v. Adams..... 175, 215
Fitzpatrick v. Kelly..... 335
Flannagan v. Bishop Wearmouth. 510
Fletcher v. Calthrop..... 184
Flower v. Allen..... 57
Ford v. Wiley..... 395
Forrester v. Clarke..... 340
Fraser v. Dickson..... 5, 585
Fraser, q.t. v. McKenzie..... 6
Fraser, *Re*..... 384
Freeman v. Reid..... 236
Freeze, *Ex parte*..... 435
Friel v. Ferguson.....52, 152, 323, 325
Fullerton v. Switzer..... 315, 591

G

PAGE

Galliard v. Laxton..... 355
Gallihew v. Peterson..... 574
Gardner v. Burwell..... 314, 317
Gardner v. Mansbridge..... 521
Garner v. Coleman..... 36
Garnett v. Farrand..... 36
Garrison v. Harding..... 157
Gates v. Devenish..... 319
Gauthereau, *Re*..... 105
Gauvin v. Moore..... 32
Gay v. Mathews..... 236
Gelan v. Hall..... 37
Gervais, *Ex parte*..... 457
Gibson v. Lawson..... 602
Gibson v. McDonald..... 226
Gidney v. Diblee..... 231
Gilchen v. Eaton..... 234
Gillespie v. Wright..... 326, 327
Gondouin v. Lewis..... 328
Goodine, *Ex parte*..... 460
Goodman v. R..... 115, 448
Goss v. Jackson..... 177
Gostling, *Ex parte*..... 94
Goudie v. Langlois..... 316
Graham v. McArthur.....149, 319, 332
Grant, q.t. v. McFadden..... 331
Gravel v. Belanger..... 36
Graves v. Ashford..... 392
Great W. R. Co. v. Bailie..... 605
Grieves, *Ex parte*..... 27, 169
Groves, *Ex parte*.....27, 161, 579
Guerin, *Re*..... 89
Gugy v. Kerr..... 36
Gugy v. Stewart..... 36

H

Haacke v. Adamson.191, 319, 324, 331, 332
Haidee, The..... 318
Haigh v. Sheffield..... 362
Hallett v. Wilmot..... 314
Hamilton v. Bone..... 522
Hamilton v. Walker..... 154
Hancock v. Somes..... 200
Hanway v. Boultbee..... 340
Hardy v. Ryle..... 322
Hargreaves v. Diddams..... 38
Harrison v. Brega..... 323

	PAGE
Harrison v. Corporation Simcoe..	323
Hartley v. Hindmarsh.....	201
Hartley v. Russell.....	508
Hatch v. Taylor.....	323
Hatton's case	12
Haylock v. Sparke	37, 328
Hays, *Ex parte*.....	99
Helps v. Eno.....	229
Henault, *Re*.....	457
Henderson v. Preston.....	457
Hennessy, *Re*	186
Herbert v. Paquet.....	238
Hespeler v. Shaw.....234,	237, 587
Heymann v. R.....	389
Hill v. Thorncroft.....	146
Hilton v. Woods	508
Hodge v. R.....	483
Hogue, *Ex parte*	155, 156
Holland, *Re*.....	170, 237
Holman, *Re*.....	28
Hope v. Evered	73
Hopper, *Ex parte*.....	578
Hopwood, *Ex parte*.....	57
Hornsby v. Raggett	362
Horsman v. R.....	389
Howard, *Ex parte*	195
Howell v. Armour.....	65
Howells v. Wynne	337
Huard v. Dunn	319
Hunt v. McArthur.....	16, 314
Hunter v. Gllkison.....	319, 461
Hunter, *Re* v. Griffiths	461
Huot, *Ex parte*.....	102
Hutchinson v. Lowndes.....	185

J.

Jackson v. Kassel	534
Jacomb v. Dodgson.....	146
Jeffreys, *Re*	21
Jenks v. Turpin.....	449
John v. R.....	389
Johnson v. Colam.....	158, [illegible]
Johnson, *Ex parte*.....	[illegible]
Jones, *Ex parte*.....	28, 57, 58, [illegible]
Jones v. Glasford.....	[illegible]
Jones v. Grace.....	152, 320
Jones v. Holden.....	319
Jones v. Ross	64
Judge, C. C. York, *Re*.....	84
Julien v. King.....	199
Justices, *Re*.....	224, 232
Justices York, *Re*.....	232

K.

Keefe v. McLennan.....	491
Keenaham, q.t. v. Egleson.....	256
Keir v. Leeman.....	384
Kelly, *Ex parte*.....	435, 573
Kelly, q.t. v. Cowan.....	223, 255
Kemble v. McGarry.....	330
Kennedy, *Ex parte*.....	182
Kent v. Olds.....	230, 231
Keohan v. Cook.....	229
Kerr v. Brunton.....	508
Kimbolton, *Ex parte*...	78

L.

Labalmondiere v. Addison.....	146
Lacombe v. Ste. Marie.....	89
Lake, *Re*.....	240
Lake v. Butler.....	66
Lane v. Collins.....	334
Langwith v. Dawson.....	14, 16
Laughey, *Ex parte*.....	28, 186
Lawrenson v. Hill.....	53, 65
Laws v. Telford.....	437
Leamington v. Moultrie.....	321
Leary v. Patrick.....	203, 316
Leatt v. Vine	38
Leete v. Hart.....	340
Legere, *Ex parte*.....	581
Legg v. Pardoe.....	38
Leslie v. Harvey.....	592
Lewis, *Ex parte*.....	321
Lewis, *Re*.....	354
Lewis v. Fernor.....	394
Lewis v. Levy.....	482
Lindsay v. Cundy.....	560
Linford v. Fitzroy.....	37
Little v. Ince.....	533
Livingstone, *Re*.....	182
Lloyd v. Clarke	507
London & N. W. R. Co. v. Richards.....	605
Longway, q.t. v. Avison.....	561
Lort v. Hutton.....	590

	PAGE
Lucas, *Re*	222
Lutz, *Ex parte*	151
Lynden v. King	591

M.

	PAGE
Macdonald's case	478
MacLeod v. Attorney-General	46, 362
Madden, *Re*	231, 236
Madden v. Shewer	330
Maguire, *Ex parte*	102, 105
Mallot v. R.	46
Manzer, *Ex parte*	572
Margate v. Hannon	5
Marshall v. Platt	507
Marsh v. Boulton	325
Marsh v. Loader	464
Martin, *Re*	437
Martin v. De Montigny	174
Martin v. Pridgeon	77, 155, 162
Mason v. Bibby	57
Mason v. Gurnett	322
Masper v. Brown	199
Massey v. Johnson	322
Mayhew v. Wordley	186
May, q.t. v. Middleton	257
Mechiam v. Horne	213, 214, 252
Medcalf v. Widdefield	256
Melanson, *Ex parte*	189
Mercer, *Ex parte*	567
Messenger v. Parker	80, 173
Metcalf, *Re*	568
Metcalf, q.t. v. Reeve	254, 256
Mewburn v. Street	507
Meyers, *Re*	222, 231
Mills v. Brown	486
Mills v. Collett	36, 314
Mitchell v. Defries	351
Mitchell v. Foster	58
Moffatt v. Bernard	177, 214
Moore v. Gidley	329
Moore v. Holditch	317
Moore v. Jarron	177, 182
Moore v. Sharkey	61, 375
Moran v. Palmer	323, 327
Morant v. Taylor	153, 155, 192
Morden v. Porter	159
Morgan v. Hughes	37
Morley v. Greenbaigh	395
Mould v. Williams	37
Mulcahy v. R.	389
Mullins v. Bellamere	184
Mullins v. Collins	337
Murphy, q.t. v. Harvey	253
Murphy, *Re*	222, 226
Murphy v. Ellis	323-4
Murphy v. Manning	394
Murray v. Thompson	243
Myers, *Re*	223

Mc.

	PAGE
McAdam v. Weaver	542
McCleave, *Ex parte*	570
McCrum v. Foley	330
McCully v. McCay	485
McCumber, *Re*	224
McDonald v. Bulmer	54
McDonald, *Ex parte*	582
McDonald v. Stuckey	191, 319, 328
McDougall v. Peterson	323
McEachern, *Re*	61
McGill v. License Commissioners Brantford	484
McGilvery v. Gault	148, 180, 329, 332
McGregor v. McArcher	490
McGregor v. Scarlett	52, 64
McIntosh, *Ex parte*	130
McIntosh v. Vansteenburgh	322
McIntyre v. McBean	526
McKay v. McKay	232
McKenzie v. McKay	195
McKenzie v. Mewburn	331
McKinley v. Munsie	102, 103
McKinnon, *Re*	124, 128, 199
McLean v. McLean	585
McLellan, q.t. v. Brown	255
McLellan v. McKinnon	197, 209, 215, 226 235, 238, 319
McLennan, q.t. v. McIntyre	253, 255
McNellis v. Garthshore	53

N

	PAGE
Nadeau v. Corporation de Levis	180
Nary v. Owen	318
Neill v. McMillan	325, 328
Neville v. Corporation Ross	330

PAGE

Newhold v. Coltman 14
Newton v. Harland 436

O

O'Brien v. Miller..... 326
O'Kelly v. Harvey 566
Oliphant v. Leslie 330
Ollard, q.t. v. Owens 254
Onasakeurat, *Ex parte*..... 105
Onley v. Gee..... 153, 363
O'Reilly, q.t. v. Allan 253, 256
Orr, *Ex parte*..... 237
Orr v. Spooner 317
Osborn v. Gough 328
Osborne v. Veitch..... 350
Ovens v. Taylor.....34, 316, 352, 585

P

Pacaud v. Quesnel..... 323
Pacaud v. Roy 154
Parks, *Ex parte* 501
Parkyn v. Staples 330
Parsons, q.t. v. Crabbe..... 206, 380
Pease v. McAloon..... 473
Peate v. Dickens 588
Peerless, *Re*..... 179
Penny v. Slade..... 149
Perham, *Ex parte* 155
Perkins, *Ex parte*..... 578
Perkins v. Martin..... 540
Peters v. Cowie 510
Phillips, *Ex parte*.....196, 567, 578
Pickett v. Perkins..... 324
Piel Ke-ark-an v. R..... 110
Poitevin v. Morgan..... 526
Pope & Tearle..... 335
Porter, *Ex parte*..... 191, 407
Pourier, *Ex parte*..... 569
Powell v. Williamson.....32, 341, 517
Power v. Canniff 507
Prickett v. Gratex..... 590
Prosser v. Hyde..... 195

Q

Quebec Central Ry..... 551

R

PAGE

R. v. Abbott..... 571
R. v. Abrahams..... 557, 601
R. v. Adams 238, 540, 557
R. v. Adamson..... 54, 167
R. v. Addison..... 246
R. v. Aden 473
R. v. Ahsing..... 74
R. v. Aire 193
R. v. Alexander 172, 176, 570
R. v. Allbright 235, 239, 498
R. v. Allen 224, 240, 364, 365
R. v. Ambrose 195
R. v. Andrews..... 540
R. v. All Saints 13
R. v. Arman 478
R. v. Arnoldi 537
R. v. Arrowsmith 32
R. v. Arscott 233, 597
R. v. Ashman..... 452
R. v. Ashwell..... 474
R. v. Aspinall..... 391
R. v. Atkinson ..13, 400, 526, 534, 565, 580
R. v. Attwood 382
R. v. Austin 487, 550
R. v. Bachelor..... 48
R. v. Bacon..... 153
R. v. Bail..... 438, 441
R. v. Bailey..... 475
R. v. Bain 372
R. v. Badger..... 104
R. v. Barker..... 185
R. v. Barnes 215
R. v. Barnett 474
R. v. Barrett.....18, 126, 379, 553
R. v. Barronet 104
R. v. Barrow..... 553
R. v. Bassett..... 601
R. v. Bathgate 586
R. v. Beall..... 554
R. v. Beard 582
R. v. Becker.....203, 230, 231, 236, 408
R. v. Beckley 50
R. v. Bedere 554
R. v. Beemer 4
R. v. Benjamin 311
R. v. Bennett....1, 153, 158, 162, 163, 187, 253, 364, 425, 464, 484, 500, 568

PAGE

R. v. Bent 421
R. v. Berenger 391
R. v. Bernard 169, 198, 428
R. v. Berriman..... 386, 588
R. v. Berry 57, 69, 466
R. v. Berthiaume..... 473
R. v. Bertles..... 426
R. v. Berube 404
R. v. Bidwell 194
R. v. Bienvenu..... 366
R. v. Biron 41
R. v. Bishop 462
R. v. Bissell.....406, 510, 558
R. v. Bittle..... 408
R. v. Black 494
R. v. Blackstone 439
R. v. Blair 187, 396, 581
R. v. Blakely 397
R. v. Blanchard..... 321
R. v. Blossom..... 101
R. v. Boardman..... 222, 491
R. v. Bodwell 488, 490, 493
R. v. Bolton 194
R. v. Bond..... 88, 91
R. v. Boteler..... ..... 167, 210
R. v. Boucher..... 133
R. v. Bowen 444
R. v. Boyd..... 91, 374
R. v. Boyle 8
R. v. Brakenridge..... 31, 196
R. v. Bradford 571
R. v. Bradlaugh..... 367
R. v. Bradshaw 234, 450, 518
R. v. Brady 189, 190, 576
R. v. Brawn 364
R. v. Breen 156, 191, 486, 501
R. v. Brewster 311
R. v. Brickhall..... 77
R. v. Bridge 251
R. v. Brierly..... 366
R. v. Bringloe 590
R. v. Brittain..... 534
R. v. Brown ...29, 30, 33, 42, 203, 320, 359
386, 391, 439, 440, 484, 517, 581
R. v Brownell 520
R. v. Bruce 532
R. v. Bryan..... 430
R. v. Bryans 345
R. v. Brynes 102

PAGE

R. v. Bull..... 416
R. v. Bullock..... 520
R. v. Bulmer..... 53, 530
R. v. Bunce. 472
R. v. Bunn..... 389, 390
R. v. Bunting..... 390
R. v. Burgess,..... 384, 587
R. v. Burgon..... 431
R. v. Burton 203, 427
R. v. Bush..... 1
R. v. Butler..... 375
R. v. Byrne 428
R. v. Bryant..... 502
R. v. Caister..... 182
R. v. Callahan... 479
R. v. Callicott..... 440
R. v. Cameron..... 181, 570
R. v. Campbell.....311, 441, 501, 512
R. v. Cantillon..... 191, 212
R. v. Carbray..... 18
R. v. Carden 89
R. v. Cardo 554
R. v. Carr.....53, 478, 530
R. v. Carter.....175, 230, 422, 522
R. v. Casson 567
R. v. Castle 547
R. v. Castro..... 542
R. v. Caswell.....228, 240, 470, 522
R. v. Caton 180, 382
R. v. Cavanagh....51, 76, 77, 155, 161, 495
R. v. Chalmers..... 515
R. v. Chamber 443
R. v. Chapman..... 26, 527
R. v. Chassen 63
R. v. Chayter..... 453
R. v. Cheltenham 162
R. v. Cheshire..... 185
R. v. Child..... 346
R. v. Clancy 493, 590
R. v. Clark 124, 129, 174, 571, 577
R. v. Clarke.....30, 61, 490
R. v. Clement 415, 463
R. v. Clennan..... 185
R. v. Cleworth..... 587
R. v. Closs..... 76, 440
R. v. Cockburn..... .. 415, 554
R. v. Coelho..... 443
R. v. Cohen..... 471, 512
R. v. Coleridge..... 84

	PAGE
R. v. Coles	242
R. v. Collier	215, 219, 244
R. v. Collins	173, 320, 472, 573, 581
R. v. Colmer	386
R. v. Commins	84
R. v. Coney	546
R. v. Connolly	350, 463, 553, 554
R. v. Connor	427, 436
R. v. Cooper	428
R. v. Coote	92, 402
R. v. Corcoran	564
R. v. Corey	429
R. v. Cormack	439
R. v. Cotton	320, 420
R. v. Coude	378
R. v. Coulter	485
R. v. Coutts	373, 453
R. v. Cox	106, 405, 588
R. v. Cozens	32
R. v. Crab	426
R. v. Cracknall	514
R. v. Craig	183, 442
R. v. Creamer	366
R. v. Cregan	354
R. v. Cridland	37, 153
R. v. Cronan	350, 354
R. v. Cronin	346
R. v. Croteau	103
R. v. Crouch	223
R. v. Cruse	512
R. v. Cullum	479
R. v. Cumpton	4, 67
R. v. Cunningham	444, 564
R. v. Curgerwen	365, 366
R. v. Curl	458
R. v. Curran	340
R. v. Currie	584
R. v. Curtley	310, 336
R. v. Cutbush	217
R. v. Cyr	129, 173, 191
R. v. Daggett	588
R. v. Daly	599
R. v. Daman	159
R. v. Dant	528
R. v. Davey	590
R. v. Davidson	39, 599
R. v. Davies	526
R. v. Davis	556
R. v. Dayman	320, 321
R. v. Daynes	473
R. v. De Banks	473
R. v. Dee	553
R. v. Deegon	440
R. v. Deery	530
R. v. Denham	487
R. v. Derbyshire	228
R. v. Deverell	320
R. v. Dewar	581
R. v. Dingman	384
R. v. Dodds	507
R. v. Dogherty	517
R. v. Doherty	590
R. v. Doonan	475
R. v. Dowling	5
R. v. Downes	529
R. v. Dowslay	375
R. v. Doyle	15, 213, 409, 574
R. v. Drage	422
R. v. Dubois	466
R. v. Duckworth	526
R. v. Dudley	531
R. v. Dugal	527
R. v. Dunlop	442, 584
R. v. Dunn	440
R. v. Dunning	215, 237
R. v. Duquette	460, 488
R. v. Durnion	163, 573
R. v. Dwyer	364
R. v. Dykes	512
R. v. Eardley	352
R. v. Eaves	230
R. v. Edgar	176, 578
R. v. Edwards	178, 251, 515
R. v. Elborne	486
R. v. Eli	59, 168, 221
R. v. Elliott	206, 235, 582
R. v. Elston	519
R. v. English	427
R. v. Epps	439
R. v. Essery	223
R. v. Evans	57, 547
R. v. Ewing	463
R. v. Excell	13, 491, 493
R. v. Falkingham	377
R. v. Faneuf	351
R. v. Farrant	25
R. v. Farrell	194, 410, 416, 484, 493
R. v. Faulkner	347, 489

PAGE

R. v. Fearman 4, 471, 502
R. v. Fee 221, 409, 577
R. v. Fennell 402
R. v. Ferguson 496
R. v. Ferris 212, 213
R. v. Fick 552
R. v. Field 402
R. v. Fife 521
R. v. Finkle 402
R. v. Finney 529
R. v. Firmin 240, 485
R. v. Fisher 518
R. v. Fitch 471
R. v. Fitzgerald 104, 585
R. v. Flanagan 170, 420
R. v. Flattery 553
R. v. Fletcher 24, 52, 158, 553
R. v. Flint 124
R. v. Flintshire 193
R. v. Flinton 510
R. v. Flory 217, 375
R. v. Flowers 474
R. v. Flynn 245, 488
R. v. Forbes 354, 426
R. v. Ford 431, 474, 601
R. v. Foster 430
R. v. Foulkes 478, 479
R. v. Fox 193
R. v. Francis 421, 553
R. v. Fraser 306
R. v. Freeman 245, 505, 567, 582
R. v. French 172, 443, 488, 494, 497
R. v. Fretwell 452
R. v. Friel 132
R. v. Fry 427
R. v. Furzey 566
R. v. Gaisford 28
R. v. Galbraith 460
R. v. Gamble 586
R. v. Ganes 354
R. v. Gardiner 515
R. v. Geering 420
R. v. Gemmell 427
R. v. George 387
R. v. Gibbon 27
R. v. Gibbons 364
R. v. Giles 441
R. v. Gillies 558
R. v. Glass 480

PAGE

R. v. Glover 381, 479
R. v. Glyde 475
R. v. Goddard 415
R. v. Goff 463
R. v. Golding 58
R. v. Goldsmith 560
R. v. Good 459, 460
R. v. Goodall 603
R. v. Goodman 115, 346
R. v. Goodrich 58
R. v. Gordon 148
R. v. Goss 430
R. v. Gough 174
R. v. Gould 441
R. v. Graham 571
R. v. Grainger 499
R. v. Grannis 178, 203, 484, 488, 500
R. v. Grant 211, 408
R. v. Gravelle 185
R. v. Greaves 593
R. v. Green 163, 193, 317, 461
R. v. Griffin 149, 528
R. v. Griffiths 84, 87, 417
R. v. Grimmer 25
R. v. Guardian C. Union 231
R. v. Gully 3
R. v. Guthrie 350
R. v. Hadfield 519
R. v. Hagerman 411
R. v. Hague 369
R. v. Hall 156, 172, 173, 479, 514, 579
R. v. Halpin 409, 568, 577
R. v. Hamilton 92, 515
R. v. Hancock 556
R. v. Hands 477
R. v. Handsley 25
R. v. Hannah 334
R. v. Hants 236
R. v. Hardy 519
R. v. Harmer 351
R. v. Harper 439
R. v. Harris 458, 491
R. v. Harrison 178, 471
R. v. Harshman 38
R. v. Hart 408
R. v. Hartley 190, 191, 320
R. v. Harvey 381
R. v. Hassett 91
R. v. Hawley 306

	PAGE
R. v. Hazell	178
R. v. Hazen	154
R. v. Hazleton	428
R. v. Hearn	91
R. v. Heath	570
R. v. Hefferman	172, 575
R. v. Heming	33
R. v. Hemmings	476
R. v. Henderson	454
R. v. Henley	28
R. v. Hennessy	480
R. v. Henry	393
R. v. Herbert	111
R. v. Herman	381
R. v. Herrington	197
R. v. Hertfordshire	24
R. v. Heustis	33
R. v. Hibbert	306
R. v. Hicklin	458, 482, 535
R. v. Hicks	41
R. v. Higgins	190, 569
R. v. Higham	57
R. v. Hislop	19
R. v. Hobson	556
R. v. Hodge	13, 483, 503
R. v. Hodgins	6, 576
R. v. Hoggard	182, 495
R. v. Holden	95
R. v. Hollis	307, 308, 477
R. v. Hollister	180
R. v. Holloway	591
R. v. Holmes	419, 424
R. v. Hope	421
R. v. Horton	364
R. v. House	95
R. v. Howes	418
R. v. Howorth	428
R. v. Huber	533
R. v. Hughes	15, 51, 52, 62, 158, 159 311, 478
R. v. Hulcott	193
R. v. Humphreys	406
R. v. Hunt	473
R. v. Huntingdon	194
R. v. Hynes	587
R. v. Ingham	321
R. v. Instan	529
R. v. Ion	442
R. v. Jackson	382
R. v. Jacobs	364
R. v. James	78, 474
R. v. Jamieson	506
R. v. Jarrald	371
R. v. Jarvis	380
R. v. Jeffries	177
R. v. Jenkins	371, 414
R. v. Jennison	427
R. v. Jessop	589
R. v. Jewell	481
R. v. John	470, 512
R. v. Johnson	101, 177, 194, 353, 379, 572
R. v. Jones	101, 157, 367, 416
R. v. Joyce	443
R. v. Judah	429
R. v. Jukes	156, 181, 184
R. v. Justices	181, 224, 243, 559
R. v. Justices, Anglesey	231
R. v. Justices, Carrick on suer	173
R. v. Justices, Glamorganshire	231
R. v. Justices, Huntingdon	26
R. v. Justices, Portsmouth	194
R. v. Justices, Surrey	31
R. v. Justices, Tyrone	31
R. v. Justices, Wiltshire	169
R. v. Kay	443
R. v. Kaylor	305
R. v. Kelly	564
R. v. Kennedy	168, 578, 582
R. v. Kenny	556
R. v. Kent	229
R. v. Kesteren	320
R. v. Kew	464
R. v. Keyn	55
R. v. Kiddy	166
R. v. Kilham	432
R. v. King	310, 336, 356, 497, 501
R. v. Klemp	29, 149, 153, 482, 575
R. v. Labrie	511
R. v. Lackey	354
R. v. Lackie	468, 500
R. v. Lacoursiere	40
R. v. Laird	205
R. v. Lancashire	231
R. v. Langbridge	415
R. v. Langford	28, 350
R. v. Langley	586
R. v. Langmead	557
R. v. Lantz	355

PAGE

R. v. Latimer 530
R. v. Laven 217
R. v. Leblanc 399
R. v. Lee 1, 2, 5, 1, 427
R. v. Leeds 236
R. v. Lennox 157
R. v. Leominster 229
R. v. Levecque 184, 597, 598
R. v. Levinger 415
R. v. Light 355
R. v. Lince 428
R. v. Lincolnshire 229, 231
R. v. Litticchild 157
R. v. Liverpool 236
R. v. Lloyd 542, 554
R. v. Lock 353
R. v. Lockett 440
R. v. Logan 211, 244
R. v. Lord Mayor 512
R. v. Lortie 530
R. v. Loudin 173
R. v. Lougee 148
R. v. Lovell 516
R. v. Lowenbruck 472
R. v. Lumley 365, 366
R. v. Lynch 188, 241, 338, 600
R. v. Lyons 568
R. v. Mabel 355
R. v. Mabey 202
R. v. Machen 197
R. v. Mackenzie 166, 239, 460, 485
R. v. Macleod 528
R. v. Madden 366, 406, 455
R. v. Magistrate Bally Castle 39
R. v. Magrath 338
R. v. Mahon 19
R. v. Mailloux 565
R. v. Mainwaring 18
R. v. Malcolm 522, 544
R. v. Mallory 558
R. v. Malouin 115
R. v. Manchester 230
R. v. Manning 346, 512
R. v. Marsden 355, 554
R. v. Marsh 579
R. v. Marshall 453
R. v. Martin 368, 373, 432, 436, 442, 542, 527
R. v. Mason 158, 384, 515

PAGE

R. v. Massey 32
R. v. Matheson 376
R. v. Matthews 475
R. v. May 387
R. v. Maybee 167
R. v. Meakin 431
R. v. Menary 148, 151
R. v. Merioneth 236, 239
R. v. Meyer 25, 31, 171, 407, 510, 533
R. v. Mick 91
R. v. Middleton 474
R. v. Milford 445
R. v. Milledge 26
R. v. Miller 306
R. v. Milloy 87, 418
R. v. Mills 427
R. v. Milne 55, 150, 159
R. v. Mitchell 414
R. v. Mondelet 307
R. v. Monteith 569
R. v. Moore 46, 364
R. v. Morgan 47, 192
R. v. Morley 529
R. v. Morris 199
R. v. Morse 174
R. v. Morton 93
R. v. Mosier 1, 102
R. v. Most 530
R. v. Mulholland 85
R. v. Mullady 102
R. v. Munro 126, 131
R. v. Murphy 104, 228, 391, 451
R. v. Murray 224
R. v. Mussett 38
R. v. Mycock 306
R. v. McAllan 240
R. v. McCafferty 403
R. v. McCann 463
R. v. McCarthy 163, 239
R. v. McCathey 557
R. v. McCauley 3, 57, 60, 459, 461, 701
R. v. McCay 487
R. v. McConnell 152, 492
R. v. McDonald 421, 425, 441, 442, 473, 485, 522, 570, 584
R. v. McDougall 567
R. v. McDowell 526
R. v. McElligott 351
R. v. McFarland 60, 407, 583

	PAGE
R. v. McFee	440
R. v. McGowan	1
R. v. McGrath	475, 476, 517
R. v. Greavy	391, 436
R. v. McHolme	47
R. v. McIntosh	542
R. v. McIntyre	560
R. v. McKay	86
R. v. McKenzie	18, 60, 130, 187, 239, 567, 603
R. v. McMahon	338
R. v. McMillan	163
R. v. McNamara	548
R. v. McNaughton	565
R. v. McNicol	408, 453, 502
R. v. Nan-e-quis-a-ka	407
R. v. Nash	442
R. v. Nasmith	510
R. v. Naylor	432
R. v. Negus	235, 478
R. v. Nelson	211, 417
R. v. Newton	126, 130, 191, 217
R. v. Nichol	229
R. v. Nicholls	529, 557
R. v. Norfolk	193
R. v. North	156
R. v. Nunn	171, 192
R. v. Nunnely	38
R. v. O'Brien	39
R. v. O'Grady	31
R. v. O'Leary	197, 198, 209
R. v. Olifier	306
R. v. Oliver	354
R. v. Opie	386
R. v. Orchard	458
R. v. Organ	599
R. v. Orr	213, 236, 583
R. v. Osler	182
R. v. Osman	414
R. v. Oulton	604
R. v. Over	194
R. v. Oxenham	473
R. v. Oxford	229, 466
R. v. Oxfordshire	320
R. v. Packer	307
R. v. Pah-muh-gay	405
R. v. Pain	183
R. v. Palmer	484
R. v. Paquet	554
R. v. Paris	533
R. v. Parker	88, 506
R. v. Parlee	501
R. v. Parnell	389, 590
R. v. Patchett	187
R. v. Pateman	439
R. v. Paton	489
R. v. Paul	404
R. v. Paynter	321
R. v. Peacock	87, 417
R. v. Pearham	184
R. v. Pearson	198
R. v. Pembliton	347
R. v. Percy	41
R. v. Perlay	189
R. v. Perrin	245, 585
R. v. Perry	386, 556
R. v. Pescaro	417
R. v. Petrie	117
R. v. Phelps	340
R. v. Philpot	377
R. v. Pickford	515
R. v. Pierce	567
R. v. Pipe	375
R. v. Porter	187, 213, 502, 527, 579, 583
R. v. Poulin	601
R. v. Powell	427
R. v. Pratten	156
R. v. Preedy	362
R. v. Pressy	553
R. v. Price	70
R. v. Primet	306
R. v. Prince	306, 307, 438, 473, 475, 477
R. v. Prunty	404
R. v. Quigley	413
R. v. Radcliffe	432
R. v. Rainsford	586
R. v. Ramsay	170, 367, 572, 582
R. v. Rand	25, 31
R. v. Rawson	373
R. v. Ray	366
R. v. Read	233, 471
R. v. Redman	514
R. v. Reed	373, 458
R. v. Reeves	373
R. v. Regan	403
R. v. Remon	598
R. v. Reopelle	444
R. v. Rhodes	410

PAGE

R. v. Rice 126
R. v. Richards 194, 312, 516
R. v. Richardson 28, 53, 130, 132, 190, 215, 238, 246, 558
R. v. Richmond 479
R. v. Ridgway 429
R. v. Riel..... 532
R. v. Rigby..... 428
R. v. Riley 16, 422, 571
R. v. Rinaldi..... 443
R. v. Risteen 568
R. v. Ritchie..... 105
R. v. Ritson 440
R. v. Roberts 381
R. v. Robertson 339, 515
R. v. Robinson 200, 514, 515
R. v. Robson..... 472
R. v. Roddy 500
R. v. Roden..... 420
R. v. Roe..... 4
R. v. Roes 541
R. v. Romp..... 403
R. v. Rose 531, 581
R. v. Ross 541
R. v. Rothwell 528
R. v. Row 16
R. v. Rowan 567
R. v. Rowlin..... 211
R. v. Roy..... 389
R. v. Ruck..... 15
R. v. Rugg..... 378
R. v. Russell..... 149
R. v. Ryan.....59, 167, 582
R. v. Rymal 431
R. v. Sadler..... 183
R. v. Sainsbury 12
R. v. Salop 236
R. v. Salter..... 579
R. v. Sancie 346
R. v. Sanders 64
R. v. Sanderson.....197, 215, 216, 418, 582
R. v. Sansome 88, 91
R. v. Satchwell 346
R. v. Saunders 104, 355, 458
R. v. Scaife 102, 415
R. v. Schmidt..... 557
R. v. Scott...13, 34, 111, 184, 237, 493, 509
R. v. Selby..... 410
R. v. Serva 55

PAGE

R. v. Sharp..... ..... 55, 545
R. v. Shavelear..... 568, 569
R. v. Shaw ... 104, 163, 177, 178, 198, 350, 449, 450
R. v. Shepherd 470
R. v. Sherwood 429
R. v. Shickles 469
R. v. Shortis..... 510
R. v. Shropshire 322
R. v. Shurmer 87, 413, 417
R. v. Shuttleworth 400
R. v. Silvester 587
R. v. Simmons 25, 148
R. v. Simpson..... 39, 238
R. v. Sinclair 368
R. v. Sirois 354
R. v. Slack..... 479
R. v. Slavin.....226, 310, 336, 338
R. v. Sleep..... 387
R. v. Sloan 502
R. v. Smiley 362
R. v. Smith.....57, 59, 162, 184, 307, 354, 365, 382, 414, 442, 515, 518, 556, 560, 570
R. v. Smyth 436
R. v. Snider..... 464, 486
R. v. Somersetshire..... 32
R. v. Soucie 90
R. v. Southwick... ..... 27, 190
R. v. Spackman 193
R. v. Spain 184
R. v. Spanner..... 372
R. v. Sparham.....209, 211, 500
R. v. Spencer 478
R. v. Sproule 25, 30, 165, 170, 573
R. v. Stafford 499
R. v. Staffordshire 229, 236
R. v. St. Albans..... 99, 230
R. v. Stannard 126
R. v. Starkey 19, 178, 203, 247
R. v. St. Denis ... .110, 112, 471
R. v. Steel 443
R. v. Stephenson 69, 415
R. v. Stewart 514
R. v. Stokes 466
R. v. Stone 30
R. v. Stowe..... 528
R. v. St. Paul 192
R. v. Strachan 177, 192, 492, 494, 495, 497, 498, 502

PAGE

R. v. Stripp 87
R. v. Sulis 473
R. v. Sullivan 435, 570
R. v. Surrey 24
R. v. Sutton 239, 486
R. v. Swalwell 247, 503
R. v. Taylor 222, 308, 311, 352, 390
R. v. Tebo 206, 218, 520
R. v. Thallman 458
R. v. Thomas 381, 463
R. v. Thompson 371, 406
R. v. Thurborn 475
R. v. Timming 588
R. v. Tisdale 311, 425
R. v. Tite 478
R. v. Titley 308
R. v. Todd 227
R. v. Toland 445
R. v. Tooke 26
R. v. Toronto St. Ry. Co. 463
R. v. Totness 4, 193
R. v. Tower 411, 419
R. v. Towers 527
R. v. Townley 471, 474
R. v. Treasurer Co. Kent 193
R. v. Tregarthen 590
R. v. Triganzie 242
R. v. Trudel 543
R. v. Traelove 164, 169
R. v. Tubbee 366
R. v. Tucker 213
R. v. Tuke 444
R. v. Turner 181, 386
R. v. Twist 432
R. v. Twose 462
R. v. Vanderstein 443
R. v. Verral 374
R. v. Voke 420
R. v. Vreones 423
R. v. Vrooman 162
R. v. Wade 475
R. v. Wagstaffe 529
R. v. Walden 66
R. v. Walker ... 194, 199, 464, 573, 577, 582, 574, 598, 609
R. v. Wallace 181, 582
R. v. Walsh 153, 179, 235, 568
R. v. Walton 515
R. v. Warburton 390

PAGE

R. v. Ward 22, 533, 583
R. v. Wardell 439
R. v. Warren 127
R. v. Wartman 13
R. v. Washington 185, 202, 222
R. v. Wasson 335
R. v. Waters 85, 93
R. v. Watson 550
R. v. Watts 88, 415
R. v. Webb 403
R. v. Webster 33, 463, 549
R. v. Weeks 381
R. v. Wehlan 240
R. v. Welsh 520
R. v. Wellard 458
R. v. Welton 416
R. v. Wenmouth 372
R. v. West 427
R. v. Westgate 334
R. v. Westlake 489
R. v. Westley 202
R. v. Wheatman 157
R. v. White 8, 191, 377, 439, 486, 489, 556, 579
R. v. Whitnash 588
R. v. Wield 184
R. v. Wiley 557
R. v. Wilkes 217
R. v. Wilkins 334
R. v. Williams. 179, 181, 487, 194, 386, 418
R. v. Willis 511
R. v. Wilson 308, 416, 436
R. v. Winegarner 51, 69
R. v. Wollaston 353
R. v. Woodhall 476
R. v. Wortman 183
R. v. Wright 211, 244, 513
R. v. Wynn 473
R. v. Yeomans 253
R. v. York 229
R. v. Young .. 4, 38, 124, 178, 460, 492, 497, 498, 502, 528, 553, 571
Radcliffe v. Bartholomew 147, 228
Ramey q. t. v. Jones 256
Ratt v. Parkinson 316
Rawlins v. Ellis 66
Rawnsley v. Hutchinson 231
Reece v. Miller 38
Reed v. Nutt 200

	PAGE
Rees v. Davis	38
Reid, *Ex parte*	41
Reid v. McWhinnie	177, 204, 492, 496, 498
Reynolds & Durnford	491
Rice, *Re*	195, 457
Richardson v. Ransom	1
Riel v. R.	532
Roberts v. Egerton	335
Robinson, *Re*	104
Robinson v. Tapley	326
Rockwell v. Murray	340
Rogers v. Hassard	53
Rogers v. Richards	154, 161
Ross, *Ex parte*	203
Ross, *Re*	591
Routledge v. Hislop	19
Roy v. Page	36
Russell v. Loyd	4 6
Russell v. R.	567
Ryan, *Ex parte*	29

S.

Sabin v. Deburg	330
Sandiman v. Breach	587
Scotia, The	318
Scott v. Dickson	228
Scott v. Henderson	508
Scott v. R.	470
Scott v. Stansfield	36
Selmes v. Judge	323
Selwood v. Mount	185, 236
Shaw v. Morley	362
Shea v. Choate	513
Shehan, *Ex parte*	214
Simkin, *Ex parte*	228
Sinden v. Brown	23, 215, 326
Slater, *Re*	130
Small v. G. T. R. Co.	533
Small v. Warr	395, 462
Smith, *Re*	216, 232, 438
Smith v. Evans	53
Smith v. Macdonald	508
Smith v. R.	600
Smith v. Simmons	332
Smith v. Sparrow	588
Somerville v. Mirehouse	317
Spillane v. Wilton	253
Southwick v. Hare	333
Sproule v. R.	46
Sprung v. Anderson	314, 315, 319, 323, 329
Squire q. t. v. Wilson	7
Stamp v. Sweetland	37
Stanhope v. Thorsby	230
Starr v. Heales	373
Stather, *Ex parte*	457
Staverton v. Ashburton	14
Stephens v. Stephens	53
Stephenson v. Wilson	36
St. Gemmes v. Cherrier	149
Stinson q. t. v. Guess	256
Stoness v. Lake	158, 314
Strickland v. Ward	330
Sulte v. Corporation Three Rivers	483
Sumner v. McMonagle	324
Swan v. Saunders	395
Switzer, *Re*	198

T

Talbots bail, *Re*	98
Taylor v. Fenwick	328
Taylor v. Golding	439
Taylor v. Marshall	498
Theal v. R.	529
Thibault q. t. v. Gibson	502
Thomas v. Platt	543
Thompson, *Ex parte*	352
Thompson, *Re*	93, 199
Thompson v. Durnford	156
Thorpe v. Oliver	318
Tibbs, *Ex parte*	78
Topence v. Martin	383
Trigerson v. Board, P. C.	23, 215
Trowley, *Ex parte*	149
Tully v. Corrie	334
Tupper v. Murphy	26
Turner v. Postmaster-General	158, 162
Tyler v. Louden	65

U.

Upper v. McFarland	326
Usill v. Hales	482

W

	PAGE
Wakefield v. West Midland	30
Wakefield v. West Riding	163
Wallace, *Ex parte*	28, 29, 202
Ward v. Reed	253, 257
Ware v. Stanstead	12
Washington v. Young	604
Watkins, *Ex parte*	236
Watkins v. Major	38
Watson v. Fournier	322
Watson v. Toronto G. & W. Co	533
Watts, *Re*	237
Weaver v. Price	37
Webb v. Spears	321
Webb's case	458
Week's v. Bonham	493
Welsh, *Ex parte*	171
Wemyss v. Hopkins	197
Westbrook v. Callaghan	200
West v. Smallwood	314
Westmore v. Pain	251
Whalen, *Ex parte*	214
Whelan v. Stevens	214, 318
White, *Ex parte*	258, 583
White v. Bywater	336
White v. Feast	38
Whittier v. Diblee	306, 317
Whittle v. Frankland	77
Wiles v. Cooper	157
Wilkins v. Hemsworth	193
Williams, *Re*	57, 58
Williams v. Burgess	228
Williamson, *Ex parte*	2
Wilkinson v. Dutton	352
Willis v. Bridger	590
Wilson, *Ex parte*	187
Wilson, *Re*	230
Wilson v. Graybiel	185, 496
Wilson v. Stewart	126, 337
Winslow v. Gallagher	218, 601
Wood, *Ex parte*	158
Woodhouse, *Ex parte*	485
Woodlock v. Dickie	580
Wray v. Toke	492

Y

Young v. Higgon	228, 322
Young v. Saylor	34

PAGE
.... 38
.... 306, 317
.... 77
.... 157
.... 193
.... 57, 58
.... 228
.... 2
.... 352
.... 590
.... 187
.... 230
... 185, 496
... 126, 337
... 218, 601
.... 158
.... 485
.... 580
.... 492

.. 228, 322
.. 34

INTRODUCTORY CHAPTER.

THE Crown has the prerogative right to appoint justices of the peace within the Dominion of Canada and each of its provinces, but it derogated from that right by assenting to the British North America Act which, in delegating the administration of justice to the Provinces, gave them also the right to appoint justices of the peace though the right of the Crown is still exercisable. R. v. Bush, 15 O. R. 398. Of course justices may be appointed by Act of Parliament; or persons holding certain offices may, on being appointed or elected to such offices, becomes justices of the peace.

In general they are divided into two classes, namely, those appointed by commission, and those who are such for the time being merely by virtue of holding some other office. Thus every Judge of the Supreme Court of Canada, the Exchequer Court of Canada, and of the Supreme Court of Judicature for Ontario, is *ex-officio* a justice of the peace. R. S. O. c. 71, s. 1. See also R. v. Mosier, 4 P. R. O. 64.

Reeves of municipalities in certain 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. v. McGowan, 22 O. R. 497.

In Ontario, the Revised Statutes, c. 71, provide for the appointment and qualification of justices of the peace, and the legislature of that province had power under the British North America Act, s. 92, No. 14. to pass this statute. R. v. Bennett, 1 O. R. 445; R. v. Bush, 15 O. R. 398; R. v. Lee, 15 O. R. 353.

The appointment of police magistrates is expressly provided for by the R. S. O. c. 72, and the office is one which was created many years before that Act, and the right of appointment is vested in the Provincial Government. Richardson v. Ransom, 10 O. R. 387.

Where a police magistrate has a patent from the Ontario Government and it does not appear that a commission has been issued by the Dominion Government, nor that search and enquiry have been made at the proper offices to ascertain whether a commission has been issued by such Government, but there is only an affidavit shewing that the magistrate has no authority from the Dominion Government as the deponent knows from "common and notorious report," the court will not hear discussed the constitutional question as to which Government should make the appointment, or that the appointment by the Ontario Government is invalid. R. v. Richardson, 8 O. R. 651.

Where a statute provided that police magistrates might be appointed when in the opinion of the Lieutenant-Governor the due administration of justice required their "temporary appointment" it was held not necessary that the commission of the magistrate should be for a temporary period, the statute declaring that such magistrates should hold office "during pleasure" and the habendum in the commission being so limited. R. v. Lee, 15 O. R. 353; as to appointing county police magistrates see the (Ont.) 55 V. c. 16.

The local Government of the province of New Brunswick has power to appoint justices of the peace, notwithstanding the provisions of the British North America Act. *Ex parte* Williamson, 24 S. C. N. B., 64; *ex parte* Perkins, *Ib.*, 66.

The Lieutenant-Governor of the North-West Territories may appoint justices of the peace for the territories, who shall have jurisdiction as such throughout the same. R. S. C. c. 50, s. 64.

In the District of Keewatin the Lieutenant-Governor may appoint justices of the peace and such other officers as are necessary for administering the laws in force in the District. R. S. C. c. 53, s. 23.

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

Any judge of a court, judge of sessions of the peace, recorder, police magistrate, or stipendiary magistrate has full power to do alone whatever is by the "Indian Act" authorized to be done by a justice of the peace, or by two justices of the peace. R. S. C. c. 43, s. 115. And every Indian agent is *ex-officio* a justice of the peace for the purposes of the Act, and has the power and authority of two justices of the peace with jurisdiction wheresoever any violation of the Act occurs or wheresoever it is considered by him most conducive to the ends of justice that any violation of the Act should be tried. 53 V. c. 29, s. 9. See R. v. M'Cauley, 14 O. R. 643.

A police magistrate appointed under the (Ont.) 41 V. c. 4, is not bound to exercise the functions of his office at a police court set apart and appointed by law in that behalf. R. v. Lee, 15 O. R. 353.

The (Ont.) 48 V. c. 17, s. 4, makes it the duty of the county council to provide a proper office for every county police magistrate.

In Ontario, under the R. S. c. 72, s. 18, every police magistrate is *ex officio* a justice of the peace for the whole county for which or for part of which he has been appointed; and under section 21 such police magistrate has the power of two justices of the peace, while acting as aforesaid. Therefore, a police magistrate for the city of Hamilton, in the county of Wentworth, while sitting there, may try an offender for breach of "The Liquor License Act" committed in the township of Barton, in the said county. R. v. Gully, 21 O. R. 219.

A person having a commission as police magistrate for the county of H., such commission not excluding the town of W., and also having a separate commission as police magistrate for the towns of W. G. C. and S. respectively, all being in the county of H., convicted the defendant at W. of an offence against "The Canada Temperance Act," committed at W., but upon an information taken and summons issued by him at the town of C., and the court held, having regard to the provisions of section 103 (*b*) of "The Canada Temperance Act," and of the R. S. O. c. 72, s. 11, that the magistrate had jurisdiction, by virtue of his commission for the county, over the offence, and had also jurisdiction

by virtue thereof to take the information and summons at C., and the fact that he described himself in the information and summons as police magistrate for the town of W. did not deprive him of the jurisdiction which he had as police magistrate for the county. R. v. Roe, 16 O. R. 1; R. v. Young, 13 O. R. 198, followed.

An objection that a conviction for unlawfully keeping liquor for sale without a license at the village of M. in the township of O., should have negatived that the place where the offence was committed was an Indian reserve, which it was alleged formed part of such township, was overruled, as there was nothing to show the fact alleged, and under the R. S. O. c. 5, s. 1. O. appeared to be in the county for which the justices assumed to act. In the absence of evidence to the contrary the inference is that the magistrate is acting within the territorial limits of his jurisdiction. R. v. Fearman, 22 O. R. 456.

It is a general rule that all judicial acts exercised by persons whose judicial authority is limited as to locality must appear to be done within the locality to which the authority is limited. R. v. Totness, 11 Q. B. 80; R. v. Cumpton, 5 Q. B. D. 341. And where the police magistrate for the county of Brant, whose commission excluded the city of Brantford, convicted the defendant of an offence against "The Canada Temperance Act," committed at a place in the county outside of the city, and the information was laid, the charge heard and adjudicated upon and the conviction made in the city of Brantford, it was held that the magistrate had no jurisdiction and that what he did was not authorized by the (Ont.) 41 V. c. 4; R. v. Beemer, 15 O. R. 266. In the case of R. v. Lee, 15 O. R. 353, Mr. Justice Robertson and the Divisional Court on appeal came to the conclusion on similar facts that the police magistrate had jurisdiction under the latter part of s-s. 3 of s. 9 of the (Ont.) 41 V. c. 4. But this part was left out in the consolidation and the decision cannot now be relied on.

The defendant was tried at Belleville before the police magistrate of the county of Hastings and convicted for amongst other things supplying milk from which the cream or strippings had been taken or kept back. The factory was in Hastings but the

defendant resided and the milk was supplied in the county of Lennox and Addington. The court held that the police magistrate of Hastings had no jurisdiction to try the offence. R. v. Dowling, 17 O. R. 698.

The expression "magistrate" when used in any Act of the Parliament of Canada means a justice of the peace. The expression "two justices" means two or more justices of the peace assembled and acting together. R. S. C. c. 1, s. 7, s-s. 34-35. In the Code the expression "justice" means a justice of the peace, and includes two or more justices, if two or more justices act or have jurisdiction, and also any person having the power or authority of two or more justices of the peace; R. S. C. c. 174, s. 2 (*b*). See s. 3 (*n*) also s. 839 (*a*).

If anything is directed to be done by or before a magistrate or justice of the peace, it shall be done by or before one whose jurisdiction or powers extend to the place where such thing is to be done: and whenever power is given to any person, officer, or functionary to do or to enforce the doing of any act or thing, all such powers shall be understood to be also given as are necessary to enable such person, officer or functionary to do or enforce the doing of such act or thing. R. S. C. c. 1, s. 7, s-s. 36, 37.

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

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

This principle was recognized in a case under "The Canada Temperance Act" where objection was raised that one of the convicting magistrates had not the necessary property qualification; but it

appeared that the defendant had not negatived that the justice was a person who is within the terms of the exception, or proviso in the 9th section of the R. S. O. c. 71. Consequently, he might be a Mayor, Reeve, or Deputy-Reeve of some municipality, and as such under the protection of section 2 of the Act. The defendant therefore failed in shewing the justice to be a person who might not lawfully act as such although he had not the required property qualification. R. v. Hodgins, 12 O. R. 367.

Under the C. S. (Can.), c. 100, s. 3, R. S. O. c. 71, s. 9, a justice of the peace must have an interest in land in his actual possession to the value of $1,200. But this statute does not require him to have a legal estate in the property. It is sufficient if the land, though mortgaged in fee exceeds by $1,200, the amount of the mortgage money. Fraser q.t. v. McKenzie, 28 Q. B. (Ont.) 255.

The object of this section was not to provide security for damages which might be recovered in consequence of any wrongful act or default of the justice. The intention, rather, was that the office should be held only by persons of standing in the community, such, at least, as would attach to any one in possession for his own use and benefit of any of the estates or interests specified in lands of the prescribed value. The interest 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 what will satisfy all incumbrances affecting the same, and over and above all rents and charges payable out of the same, such an estate or interest as is mentioned in the section, and the actual value of the interest itself is not material. Thus an interest as tenant by the courtesy in right of a deceased wife in a lot of the clear value of $1,200, is sufficient though the actual value of the life interest of the justice may not reach that sum. Weir v. Smyth, 19 A. R. 433.

In an action against defendant for acting as a justice of the peace without sufficient property qualification, it appeared that the evidence offered by the plaintiff as to the value of the land and premises on which defendant qualified, was vague, speculative and inconclusive, one of the witnesses, in fact, having afterwards recalled his testimony as to the value of a portion of the premises,

and placed a higher estimate upon it; while the evidence tendered by the defendant was positive, and based upon tangible data, it was held that the jury were rightly directed, "that they ought to be fully satisfied as to the value of the defendant's property before finding for the plaintiff, that they should not weigh the matter in scales too nicely balanced, and that any reasonable doubt should be in favour of the defendant." Squier q.t. v. Wilson, 15 C. P. (Ont.) 284; 1 U. C. L. J., N.S. 152.

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

And, where in an action against a justice of the peace for the penalty, the defendant was called as a witness on his own behalf, and gave evidence as to the value of the property on which he qualified, and the judge in charging the jury, told them that generally speaking, the owner of property had the best opinion of its value, the direction was held right because the jury were not told that they were to be guided by such opinion, or that it was most likely to be correct. (*Ib.*)

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

A certificate purporting to be under the hand and seal of the clerk of the peace, that he did not find in his office any qualification filed by the Magistrate, is not sufficient evidence that the magis-

trate is not properly qualified to take a recognizance. R. v. White, 21 C. P. (Ont.) 354.

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

But having taken such oath he is not required to have any additional property qualification or to take any further oath to enable him to act as a justice of the peace. R. S. O. c. 71, s. 2.

In Ontario the 54 V. c. 16, s. 1, provides that every person heretofore appointed who has not, prior to this Act taken or shall not on or before the first day of August next take the oaths of office and qualification shall cease to be a justice of the peace and the commission under which he was appointed, shall, so far as relates to him, be deemed to be absolutely revoked and cancelled, and by section 2 every person hereafter appointed a justice of the peace shall take the oaths of qualification and of office within three months from the date of the commission under which he is appointed, otherwise the said commission shall, so far as the same relates to him be deemed to be absolutely revoked and cancelled.

Except when otherwise provided by law, no solicitor in any court whatever, is eligible as a justice of the peace during the time he continues to practise as a solicitor. R. S. O. c. 71, s. 7.

But as section 18 of the R. S. O. c. 72, provides that every police magistrate shall, *ex-officio*, be a justice of the peace for the place in which he holds office, such police magistrate is not disqualified from acting as such justice of the peace by reason of his being a practising solicitor. Richardson v. Ransom, 10 O. R. 387. But he cannot act as solicitor in any criminal matters (*Ib.* s. 27.)

No person having, using, or exercising the office of sheriff or coroner, shall be competent or qualified to be a justice of the peace. R. S. O. c. 71, s. 8. But a stipendiary magistrate for any temporary judicial district, may be a coroner for the district (*Ib.*).

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

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

Every complaint and information must be heard by one justice or two or more 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. But if there is no direction requiring more then one justice for the territorial division where the matter of the complaint or information arose may hear, try and determine the case: Code s. 842. Under s. 73, s-s. 2 of the Code, two justices must try every one who entices a soldier or sailor to desert. So two justices must try every one resisting the execution of a warrant to search for deserters from Her Majesty's military or naval service, s. 74. So two or more persons openly carrying offensive weapons can only be convicted by two justices of the peace, s. 103. So every one having on his person a pistol or air gun when arrested, s. 107; so every one having a pistol or air gun with intent to injure any other person, s. 108; so every one pointing any fire arm at any person, s. 109; or carrying offensive weapons, s. 110; or carrying sheath knives, s. 111; so the sale of improved arms in the North-West Territories is punishable only by two justices of the peace, s. 116; so conveying intoxicating liquor on board any of Her Majesty's

ships, s. 119; so obstructing a public or peace officer in the execution of his duty, s. 144; so the doing of any indecent act, s. 177; so playing or looking on in a gaming house, s. 199; so obstructing a peace officer in entering any disorderly house, s. 200; so all cases of vagrancy, s. 208; so secreting wrecks, s. 381; so the unlawful sale or possession of public stores, s. 387 or not satifying the justices that the possession of such stores was lawful, s. 388; or searching for such stores near Her Majesty's vessels, s. 389; so receiving arms or clothing belonging to Her Majesty from soldiers is justiciable only by two justices of the peace, s. 390; so receiving necessaries from mariners or deserters, s. 391; so printing circulars, etc., in likeness of notes, s. 442; or uttering defaced coin, s. 476; so preventing the saving of any wreck, s. 496, s-s. 2; so the offence of cruelty to animals, s. 512; or keeping a cock-pit, s. 513; or criminal breaches of contract, s. 521; or intimidation with a view to force any person to abstain from doing what he has a legal right to do, s. 523; or to prevent his dealing in wheat or a stevedore from working, s. 525.

So proceedings for the summary trial of indictable offences require two justices of the peace, s. 782, or for the trial of juvenile offenders for indictable offences, ss. 809, 811, 812, 815.

The Act respecting the safety of ships and the prevention of accidents on board thereof, R. S. C. c. 77, s. 20, provides that every penalty imposed by the Act may be recovered before any two justices of the peace, or any magistrate having the powers of two justices of the peace. So penalties under "The Steam Boat Inspection Act," R. S. C. c. 78, are recoverable before two justices of the peace, 56 V. c. 25, s. 2, so are penalties under the Act respecting the "Navigation of Canadian Waters," R. S. C. c. 79, s. 8, and the Act respecting "Pilotage," R. S. C. c. 80, s. 101, and the "Wrecks and Salvage Act," R. S. C. c. 81, s. 39, and the "General Inspection Act," R. S. C. c. 99, s. 25. Under the Act respecting "Military and Naval Stores," R. S. C. c. 170, ss. 8 and 12, two justices of the peace may in certain specified cases summarily convict offenders.

Penalties imposed under the "Animal Contagious Diseases Act," R. S. C. c. 69, s 46, are recoverable before two justices of the peace;

so two justices of the peace may try and determine in a summary way all offences punishable under the "Seamen's Act," R. S. C. c. 74, s. 114, or "The Inland Waters Seamen's Act," R. S. C. c. 75, ss. 30 and 37. Under the "Immigration Act," R. S. C. c. 65, s. 42, certain penalties not exceeding eighty dollars in amount are recoverable in a summary manner, before two justices of the peace. Under "The Trade Marks Offences Act," R. S. C. c. 166, s. 15), penalties may be recovered by a summary proceeding before two justices of the peace having jurisdiction in the county or place where the offender resides, or has any place of business, or in the county in which the offence has been committed.

Two or more justices of the peace may seize any copper or brass coin which has been unlawfully manufactured or imported (R. S. C. c. 167, s. 29).

Under the "Gas Inspection Act," R. S. C. c. 101, s. 47, the proceedings must be before two justices, if the penalty exceeds twenty dollars. This must mean not the penalty actually imposed by the justices but the penalty prescribed by the Act.

Under the "Petroleum Inspection Act," R. S. C. c. 102, s. 29, the penalties imposed by the Act are recoverable before a police or stipendiary magistrate, or two justices of the peace before whom it is preferred, and no other justice of the peace shall take part in such hearing and determination.

Under "The Weights and Measures Act," R. S. C. c. 104, s. 63, if the penalty exceed fifty dollars the proceedings must be before two justices of the peace.

Proceedings under the "Trade Unions Act," R. S. C. c. 131, s. 20, must be before two justices of the peace or a police or stipendiary magistrate.

The penalty for using another person's registered mark under the Act respecting the "Marking of Timber" can only be recovered before two justices of the peace. R. S. C. c. 64, s. 7.

So with penalties imposed for smuggling. R. S. C. c. 32, s. 192.

It is to be observed also that if it is required by any Act or law that an information or complaint shall be heard and determined by two or more justices, or that a conviction or order shall be

made by two or more justices, such justices shall be present and acting together during the whole of the hearing and determination of the case. Code, s. 842, s-s. 6.

In every Act of the Parliament of Canada, unless the context otherwise requires the expression, "two justices" means two or more justices of the peace assembled or acting together. R. S. C. c. 1, s. 7 (35).

The judge of the sessions of the peace for the City of Quebec, the judge of the sessions of the peace for the City of Montreal, and every recorder, police magistrate, district magistrate or stipendiary magistrate appointed for any territorial division, and every magistrate authorized by the law of the province in which he acts to perform acts usually required to be done by two or more justices of the peace, may do alone whatever is authorized by this Act to be done by any two or more justices of the peace, and the several forms in this Act contained may be varied so far as necessary to render them applicable to such case. R. S. C. c. 174, s. 7; Code, s. 541.

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

If the complaint be directed to be made to any justice, though the statute should require the final determination to be by two, the complaint is well lodged before one, Ware v. Stanstead, 2 Salk. 488; and see Code, s. 842 (3).

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

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

Under the commission of the peace, justices have a general power for conservation of the peace and the apprehension and

commitment of felons. The commission gives them jurisdiction in all indictable offences to discharge, admit to bail, or commit for trial. Connors v. Darling, 23 Q. B. (Ont.) 543.

The maxim *omnia præsumuntur rite esse actu* does not apply to give jurisdiction to justices or other inferior tribunals. R. v. Atkinson, 17 C. P. (Ont.) 302. On this principle in a prosecution for a penalty under a by-law of a corporation, the by-law must be proved, for it must appear on the face of the proceedings that there is jurisdiction. R. v. Wartman, 4 Allen, 73; R. v. All Saints, 7 B. & C. 785.

But the maxim applies so as to warrant a presumption that the evidence taken before magistrates and returned by them was read over to and signed by the witness, there being no evidence to the contrary. R. v. Excell, 20 O. R. 633; R. v. Scott, 20 O. R. 646.

Where a justice of the peace is authorized to act for a police magistrate in case of the latter's illness, absence, or at his request, and the justice acts, the maxim *omnia præsumuntur rite esse actu* applies, and the justice is presumed to be properly authorized unless the contrary appear. R. v. Hodge, 23 O. R. 450.

Before proceeding in any matter the justice should consider, 1st, whether he has jurisdiction—this is given by his commission, or by the particular statute under which the proceedings are taken; 2nd, If more than one, or any particular description of justice is required.

On the preliminary inquiry into indictable offences one justice may do everything required to be done out of sessions, except admit to bail under section 601 of the Code. But such inquiry may be by more justices than one. Code, s. 557.

When a prisoner brought up under Part LV. respecting the summary trial of indictable offences, elects to be tried by a jury, it is conceived that the preliminary inquiry directed by section 792 of the Code could only be held by a "magistrate," as defined by section 782.

In summary cases one justice may receive the information or complaint and grant a summons or warrant thereon, and issue his summons or warrant to compel the attendance of any witness for

either party, and do all other acts and matters necessary preliminary to the hearing, even if, by the statute in that behalf, it is provided that the information or complaint shall be heard and determined by two or more justices.

3rd. A justice has to consider whether a time is limited for any of the proceedings. In indictable offences formerly, with very few exceptions, there were no limitations. Now, section 551 of the Code has introduced a large number. A justice would do well to look at this section before proceeding with a preliminary inquiry; a special time is there fixed for the prosecution of various offences.

In summary cases the information also must now be laid within six months instead of three, as provided by the former statute. Code, s. 841.

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

Some acts are judicial and others are ministerial. The former must be done within the territorial limits of the jurisdiction. The latter may be done beyond them. Langwith v. Dawson, 30 C. P. (Ont.) 375.

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

A justice's jurisdiction is limited to the county or place for which he is appointed, except in cases where it is otherwise specially provided by statute. Where an objection was raised that there was no evidence to show that the offence was committed within the jurisdiction of the magistrate, and it appeared that the conviction alleged that the defendant at the town of Simcoe, did unlawfully keep intoxicating liquors for sale, and the depositions recited the

information as above and the evidence showed the liquor was found upon the premises of the defendant, the court held that the local jurisdiction sufficiently appeared. R. v. Doyle, 12 O. R., 347.

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

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

It is to be observed that under the R. S. C. c. 1, s. 7, (36) if anything is directed to be done by or before a magistrate or justice of the peace, or other public functionary or officer, it shall be done by or before one whose jurisidiction or powers extend to the place where such thing is to be done.

In Ontario, the R. S. c. 72, s. 6, provides that where there is a police magistrate for any town or city, no other justice of the peace shall, with certain exceptions, admit to bail or discharge a prisoner, or adjudicate upon or otherwise act in any case, and the statutes further provide that certain cities form for judicial purposes part of the respective counties in which they are situate.

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

Where a conviction was signed by two justices of the county of Frontenac and the case was heard in the county, and the conviction stated that it was signed there, but it appeared as a matter of fact that one of the justices signed in the city, it was held (the conviction remaining in full force) that the justice did not act *for the city* as the conviction was conclusive and it stated that the

signature was in the county. Langwith v. Dawson, 30 C. P. (Ont.) 375.

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

As the words "dealt with, inquired of, tried, determined and punished," frequently occur in the statutes, it may be observed that the words "dealt with," apply to justices of the peace, "inquired of," to the grand jury, "tried," to the petit jury, and "determined and punished," to the court. R. v. Ruck, 1 Russell, 757, note Y.

It must be remembered that this work does not define the nature of every description of offence on which a justice may be called to adjudicate. The offence may be one against a federal or provincial statute or against a by-law having application in a particular locality only. In such cases the general procedure is pointed out, but in determining the nature of the offence the particular statute or by-law must be looked to.

In reference to all indictable offences where the justice commits for trial, a *prima facie* case is all that need be made out. The justice is not trying the case and should if there is any doubt send the accused for trial.

Section 593 of the Code admits the evidence of every witness who testifies to any fact relevant to the case on behalf of the prisoner and under the 56 V. c. 31, s. 3, the prisoner and his wife are competent while under section 594 of the Code the magistrate is to form his opinion on the "whole of the evidence" and determine whether a sufficient case has been made out to put the accused upon his trial. This does not give any power of trial and has not altered the duty

of the magistrate in requiring a *prima facie* case except that the evidence on both sides must now be considered. See section 596 of the Code.

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

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

The court disapproves of the practice of the complaint being heard by the magistrate's clerk who fills up a summons and obtains the signature of any magistrate thereto whether the information or complaint is made to him or not.

See Dixon v. Wells, 25 Q. B. D. 249.

If it appear to the justice, that the offence was committed within his jurisdiction, or that the person charged is within such jurisdiction (see Code s. 554), and that the application is made in due time, he should at once issue his summons or warrant to bring the accused before him, describing the offence in such summons or warrant, from the information or complaint sworn to. If a summons be issued, reasonable time should be given the defendant to appear; if a warrant be issued, it must be executed forthwith. A summons should be issued in all cases over which the law gives a justice summary jurisdiction, in the first place, unless some good and sufficient reason should exist for issuing a warrant. In all cases of serious indictable offences a warrant, and not a summons, should be granted in the first instance.

Every warrant authorized by the Code may be issued and executed on a Sunday or statutory holiday, Code, s. 564, s-s. 3.

Upon receiving the information the justice should refer to the statute, or by-law creating the offence, and if it is one over which he has summary jurisdiction, whether the complaint is made within the time prescribed by such statute or by-law. See Code. s. 551 as to limitations. If no time is limited he must be guided by s. 841 of the Code, which directs that the prosecution of offences shall be within six months after the commission of the offence.

The period is fixed by different statutes, either with reference to the time of commencing the prosecution, or to the time of conviction, and the following rules apply according as these different terms are made use of. Where the proviso as to time runs "*that the offence be prosecuted,*" or that "*the party be prosecuted for the offence*" within a stated time, it is sufficient that the information be laid though the conviction do not take place within that time, the information being for that purpose the commencement of the prosecution. R. v. Barrett, 1 Salk. 383.

"Bringing the prosecution" means the initiation of the proceedings by the informant. It is clearly not the hearing or trial. R. v. McKenzie, 23 N. S. R. 6.

Where a statute provides that every prosecution shall be commenced within a given time, the committal of the defendant to take his trial on the charge is a commencement of the prosecution within the meaning of the Act. R. v. Carbray, 14 Q. L. R., 223.

But where a statute authorizes a conviction "provided such conviction be made within —— months after the offence committed," it is not enough to lay the information within that period, but the conviction itself is void if not made within the limited time, and it makes no difference that it was prevented from being so by an adjournment at the request of the defendant himself, for after the time has expired for making the conviction there is no authority existing for that purpose. R. v. Mainwaring, E. B. & E. 474. And where a statute provides that "such prosecution may be brought before any police magistrate or before any two justices of the peace," as the laying of the information is the bringing of the prosecution, it must be before two justices of the peace, and where the information was laid before one justice and heard by two the conviction was

quashed for want of jurisdiction. R. v. Starkey 7 M. R. 43, affirmed on appeal. *Ib.* 489.

After the commencement of this Act no civil remedy for any act or omission shall be suspended or affected by reason that such act or omission amounts to a criminal offence. Code, s. 534.

A civil proceeding for the same cause may in some cases render it inexpedient to proceed before the magistrate. Thus when an action is pending, judgment will not be given on an information for the same assault. R. v. Mahon, 4 A. & E. 575. Technically speaking, there is in such case no estoppel on the justices from proceeding, but the safe practical rule would seem to be, when it appears that civil proceedings are pending in respect of the same matter to dismiss the complaint, or pass a nominal sentence unless there has been an outrage on public order, or unless by statutory provision the civil and criminal proceedings are not to interfere with each other. Should the second proceeding be merely to indemnify the complainant from an alleged wrong a previous civil decision as to the same matter will be conclusive. Thus a judgment against a servant in a civil court for wrongful dismissal is an answer to an application to justices to enforce payment of wages. Routledge v. Hislop, 29 L. J. M. C. 90.

We will now suppose the complainant and defendant to be in attendance with their witnesses on the day when, and at the place where, it was appointed to hold the court. If the offence complained of be one over which the justice or justices has or have summary jurisdiction, the court is an open one, to which the public have the right of access. Code, s. 849.

The court having been opened by the constable announcing such opening, and calling for order, the names of the parties should then be called, and the information or complaint read to the accused by the justice, and in cases of summary jurisdiction, the question asked, if he admit the truth of the complaint, or, if he have any cause to show why he should not be convicted, or why an order should not be made against him, as the case may be. Code, s. 856.

If he voluntarily admit it, the justice present at the hearing shall convict him or make an order against him accordingly. *Ib.* s-s. 2.

Any accused person on his trial for any indictable offence, or his counsel or solicitor, may admit any fact alleged against the accused so as to dispense with proof thereof. Code, s. 690.

It is always desirable to take the defendant's admission in writing, and signed by him if he will. If the offence be not admitted, the justice must proceed to take the evidence of the complainant and his witnesses, and afterwards that of the witnesses for the defendant.

In cases of indictable offences there is now, as we have seen, a right to examine witnesses for the accused, and the statement of the accused himself is taken or he or his wife may give evidence. The rule is the same in the case of summary convictions except that the statement of the accused is not taken; see Code, ss. 591, 592-593; 56 V. c. 31. This evidence must be given under oath and be taken down in writing (Code, ss. 590, 843-851), as near as may be in the words of the witnesses; the evidence of each to be signed by him and the justice; the accused, the witness and justice being all present together at the time of such reading and signing; see Code, s. 590.

Where the evidence is taken in shorthand it is not necessary that it should be read over to and signed by the witness; *Ib.* s-s. 7. But if not so taken before the witness signs the evidence he has given, it should be read over to him, to ascertain whether it has been correctly taken down, or that his right meaning has been expressed: any mistake should be corrected before he signs it. If the justice should see any good cause for so doing, he may adjourn the hearing of the case to some future day, and in the meantime commit the defendant to the common gaol, or may discharge him, upon his entering into a recognizance, with or without sureties, for his appearance at the time appointed. Persons charged with indictable offences may be remanded by warrant from time to time for any period not exceeding eight clear days at any one time, or may be verbally remanded for any time not exceeding three clear days. Code, s. 586.

In many cases, particularly in indictable offences, it is desirable for the justice to order the witnesses on both sides to leave the court; but it is important to observe, that if any witness should

remain in court, notwithstanding any such order, his evidence cannot be safely refused. Black v. Besse, 12 O. R. 522.

In the case of indictable offences after the first examination of witnesses, they may be cross-examined by the prisoner; and when their evidence is completed, their depositions are to be read by the justice to the accused; and then any statement he may make, after being duly cautioned is to be taken down in writing as nearly as possible in his own words, signed by him, if he will, as well as by the acting justice or justices. See Code, s. 591.

The justice or justices having heard the evidence on both sides, the first question to determine is, whether the charge is sustained by the evidence; or, in indictable offences, although the offence may not be clearly proved, whether there is sufficient doubt to send the case to another tribunal; or the case may be adjourned for further hearing. If the case can be disposed of summarily, the justice or justices will adjudge the amount of the penalty to be imposed, under the limitations of the statutes creating the offence, together with the costs, which should be recorded on the proceedings, together with the period of imprisonment, with or without hard labour, to be awarded in case of non-payment of fine and costs; a minute of which should be served on the defendant, if he have to pay money, for which no fee should be paid; before which service no warrant of distress or commitment shall be issued. Code, s. 863.

If more than one justice be acting, the judgment should be according to the opinion of the majority. Though all justices who choose to attend at petty session may act and take part in the business, if one comes into court in the middle of a case and takes part, the proceedings should be commenced *de novo* unless the parties choose to waive the objection. *Re* Jeffreys, 34 J. P. 727. The chairman or presiding justice may vote, but he is not entitled to a double or casting vote. If the justices are equally divided in opinion, there should be no adjudication, but the justices should adjourn the case to a future day, and then entirely rehear the case, when other magistrates may be present, or further evidence adduced. If no adjudication be made, or the case postponed, the information may be laid again, if the time for doing so has not

expired, and the proceedings be wholly recommenced. If the judgment be given, it may be altered during the same sitting, but not afterwards. Two or more justices may lawfully do whatever any one justice may do alone.

With respect to indictable offences, where the justice or justices intend to commit the prisoner for trial, he should not be specially committed for trial to any particular court. This is important, as where a statute directs a prisoner to be tried at the sessions, a commitment to the assizes would be bad, and the prisoner would be entitled to his discharge. R. v. Ward, 15 Cox, 321; see Code, s. 596, and Warrant of Commitment, Form V.

In every case, where a person is committed for trial, to answer to a criminal charge, the justice of the peace so committing shall transmit the informations, depositions, examinations, recognizances and papers connected with the charge, to the clerk or other proper officer of the court in which the trial is to be had. Code, s. 600.

When a justice commits a prisoner to gaol, he should at once, and before the parties leave his presence, or the proceedings be considered as concluded, bind over the prosecutor and the witnesses to prosecute and give evidence at the court by which the accused is to be tried. Code, s. 598; see also s. 641.

It is not unusual for persons, on conviction, to request the justice to allow time for payment of the fine, at the same time offering to pay down part immediately. Such applications cannot be safely granted, as it is conceived that after part payment the right of commitment would be gone, the justice having no power to apportion the period of imprisonment. The law does not intend or provide for a man to suffer two modes of punishment, *i.e.*, by purse and person, for the same offence; and on this principle, when the goods of an offender are not sufficient to satisfy a distress, they ought not to be taken, but the ulterior punishment resorted to. See s. 969 of the Code.

No part less than the whole amount adjudged to be paid should be received, nor by instalments, except where such power is given by statute, for if it becomes necessary to issue the commitment, what has been received on the distress warrant must be refunded. Where there is not sufficient to cover the penalty and costs, the

return upon the warrant of distress should state that fact and upon that a warrant of commitment may issue. A commitment for part of the sum adjudged by the conviction to be paid is illegal. Where a conviction directed the payment of a fine and costs to be levied by distress if not paid forthwith, and in default of sufficient distress, imprisonment, and the defendant paid the costs but not the fine, a warrant of commitment issued after a failure to realize on a warrant of distress was held illegal. Sinden v. Brown, 17 A. R. 173, following Trigerson v. Board of Police, Cobourg, 6 O. S. 405.

When juvenile offenders are tried for indictable offences the justices may, if they deem it expedient, appoint some future day for the payment of any pecuniary penalty adjudged to be paid. See Code, s. 825.

In Ontario the 53 V. c. 24, s. 1, provides that in case of summary conviction or of an order made by a justice of the peace, police magistrate or stipendiary magistrate, whereby any fine, penalty or costs, is or are adjudged to be paid by the conviction or order of such justice, police or stipendiary magistrate the conviction or order shall not be void because of time having been allowed for the payment of the sum or any part thereof, or because of payment having been received of part of the sum or sums adjudged to be paid or because of the convicting justice, police or stipendiary magistrate having accepted security for the payment of any such sum or of any part thereof. But nothing herein contained shall authorize any justice of the peace, police magistrate or stipendiary magistrate to allow payment by instalments or to give time for payment of such fine, penalty or costs in any case in which he has not heretofore had such authority. Of course this Act applies only to matters over which the Legislature of Ontario has jurisdiction.

Justices are sometimes requested to rehear a case after the decision has been pronounced, on the ground of the parties having been taken by surprise by the evidence, or of having, subsequently to the hearing, discovered testimony which might have affected the judgment. Justices have, however, no power to re-open the investigation after they have once given judgment, and after the

court is closed. The only way, then, of impeaching their judgment is by appeal or *certiorari*.

Justices are not obliged to fix the fine or imprisonment at the time of conviction, but may take time either for the purpose of informing themselves as to the legal penalty, or of taking advice as to the law applicable to the case.

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

In indictable cases, however, every one who has been committed for trial may be entitled at any time before the trial to have copies of the depositions and of his own statement on paying a reasonable sum for the same, not exceeding five cents for one hundred words. Code, s. 597.

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

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

If there is a disqualifying interest, the justice should not sit in the case, and the court will not enter into the question as to whether his interest affected his decision. A disqualifying interest is not

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

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

To disqualify a justice from acting in a prosecution before him he must have either a pecuniary or such other substantial interest in the result as to make it likely that he would be biassed in favour of one of the parties. It is not a ground of disqualification that the justice and the counsel who conducted the prosecution are partners in business as attorneys, provided that they have no joint interest in the fees earned by the counsel in the prosecution or in any fees payable to the justice on the trial of the information, and provided that the justice be not an Ontario police magistrate. R. S. O. c. 72, s. 27. Neither is it any disqualification that the justice was appointed and paid by the town council, at whose instance the complaint was made, and the prosecution carried on; his salary being a fixed sum, not dependent on the amount of fines collected. R. v. Grimmer, 25 S. C. N. B. 424.

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

If a magistrate has such a substantial interest other than pecuniary in the result of the hearing as to make it likely that he will have a bias, he is disqualified. The fact that a magistrate has been subpœnaed, and that it is intended to call him as a witness at the hearing, is not a legal disqualification, and the court will not on that ground prohibit the magistrate from sitting. R. v. Farrant, 20 Q. B. D. 58.

And the calling of a magistrate sitting on a case as a witness does not of itself disqualify him from further acting in the case. R. v. Sproule, 14 O. R. 375. See also R. v. Handsley, 8 Q. B. D.

383. Nor does the mere fact of a subpœna having been served on a magistrate to give evidence. R. v. Tooke, 31 W. R. 753.

To disqualify, the interest need not be a direct pecuniary one if the justice is indirectly interested in the result of the decision. Thus where the defendant having sold land by auction, under a decree of the court, was convicted of a breach of a municipal by-law, providing that it should not be lawful for any person to sell by public auction any wares, goods or merchandise of any kind without a license. Two of the four convicting justices were licensed auctioneers for the county, and persisted in sitting after objection taken on account of interest, though one justice was competent to try the case. It was held that they were disqualified, and on quashing the conviction on that ground, the court ordered them to pay the costs. R. v. Chapman, 1 O. R. 582. See further as to interest, Tupper v. Murphy, 3 Russell & Geldert, 173.

Where three justices who were members of the town council of a borough, and as such had taken an active part in the making of an order under the "Dogs Act," sat to hear a complaint of non-observance of the order, the court held that they had no such interest in the subject matter as to oust their jurisdiction. R v Justices of Huntingdon, L. R. 4 Q. B. D. 522. But where a complaint was made to the Local Government Board of a nuisance on the premises belonging to B. in the borough of W., and the board communicated with the town council of W., who were the urban sanitary authority under the "Public Health Act, 1875," and required them to abate the nuisance. The council having made inquiries, passed a resolution that steps should be taken for the removal of the nuisance, and took out a summons against B. At the hearing an order for the abatement of the nuisance was made. Two justices who were present were members of the town council when the resolution was passed. The court held that the councillors who were justices had such an interest as might give them a bias in the matter, and that they ought not to have sat as justices upon the hearing of the summons. R. v. Milledge, L. R. 4 Q. B. D. 332. The same rule applies if the summons is issued by a justice who is a member of a corporation, though it came on

for hearing before other justices, none of whom are members of the corporation. R. v. Gibbon, L. R. 6 Q. B. D. 168.

During the trial of an offence under "The Liquor License Act," the license commissioner, who was sitting at the counsel's table, went and sat in the constable's chair a few feet distant from the desk at which the magistrate was sitting, but there was no evidence to show that he in any way improperly interfered in the trial, and the court held that the license commissioner could not be deemed, under the circumstances, to have been sitting on the bench and taking part in the trial contrary to section 95 of the R. S. O. c. 194. R. v. Southwick, 21 O. R. 670.

Mere possibility of bias is not sufficient where there is no pecuniary interest. A number of persons including one N. were associated together to aid in enforcing the "Canada Temperance Act." N. being furnished with money by a member of the association purchased intoxicating liquor in order to enable him to prosecute. The information, however, was laid by a policeman at the request of other members of the association who furnished funds to carry on the prosecution. The conviction of defendant was made on the evidence of N. who was a cousin of the justice, and it was held that the latter was competent and that the prosecution need not be in the name of the collector of inland revenue. *Ex parte* Grieves, 29 S. C. N. B. 543; *Ex parte* Groves, 23 S. C. N. B. 38, followed.

At a vestry meeting summoned by a district surveyor to consider (*inter alia*) the obstruction of a highway by the defendant who had deposited and left a heap of earth and manure by the side of the highway, a justice of the peace moved a resolution calling upon the defendant to remove the heap. The defendant having failed to do so a summons was taken out against him by the district surveyor for depositing the heap to the obstruction and annoyance of the highway and for failing to remove it after notice. The justice who had moved the resolution, and who was a ratepayer of the parish, sat and adjudicated with another justice upon the summons, and made an order directing the heap to be removed and sold and the proceeds of the sale to be applied to the repair of the highway. The court held that the justice was disqualified from adjudicating upon the summons for the part taken by him in moving the

resolution, afforded ground for a reasonable suspicion of bias on his part though their might not have been bias in fact. The fact that the justice was a ratepayer pecuniarily interested in the result of the summons was also held to disqualify. R. v. Gaisford, L. R. 1 Q. B. 331 (1892), see also R. v. Henley L. R. 1 Q. B. 504 (1892).

A magistrate is not disqualified from adjudicating on a charge of selling intoxicating liquor without license from the fact that he is a chemist and druggist and in such capacity fills medical precriptions containing small quantities of spirituous liquors. R. v. Richardson, 20 O. R. 514.

But he is disqualified if he is a licensed vendor under the Act even if appointed such before it came into force. *Ex parte* Laughey, 28 S. C. N. B. 656.

A magistrate is incompetent under the "Canada Temperance Act" if his grandfather is a brother of the defendant's great grandmother. *Ex parte* Jones, 27 S. C. N. B. 552.

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

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

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

A magistrate is not disqualified by reason of the defendant's wife being the widow of a deceased son of the magistrate. *Ex parte* Wallace, 26 S. C. N. B. 593.

But he is disqualified where the defendant is the widow of his deceased son. *Ex parte* Wallace, 27 S. C. N. B. 174.

But the police magistrate of St. John is not disqualified from trying complaints for violation of the "Liquor License Act" by reason of his being a ratepayer, there being a local statute preventing any disqualification. *Ex parte* Driscoll, 27 S. C. N. B. 216.

A magistrate is disqualified to try an information under the "Canada Temperance Act" where an action for assault and false imprisonment is pending between him and the defendant, arising out of the trial of a previous information for a similar offence. *Ex parte* Ryan, 30 S. C. N. B. 256.

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

It was contended that the magistrate had a disqualifying interest in the prosecution of an offence against the "Canada Temperance Act" because he had employed and paid agents to secure convictions under the Act and because he was a strong temperance advocate, with an alleged bias in favour of the prosecution in cases under the Act. It was not shown that the magistrate was interested or engaged in promoting or directing the prosecution of this offence or defraying the expenses of it, or paying agents for evidence to be given upon it, and the court held that it was not to be inferred from anything alleged to have been done by the magistrate in other prosecutions that the same was done by him in this, and that the above statements were of too loose and vague a character to support a finding that the magistrate was disqualified from sitting. R. v. Brown, 16 O. R. 41.

On the hearing of a case by a magistrate there cannot be a trial as to the interest of the magistrate himself, and the latter is justified in refusing to admit evidence for the purpose of showing his interest or bias. Even if such evidence were admissible its rejection would not afford ground for quashing the conviction. R. v. Brown, 16 O. R. 41; R. v. Sproule, 14 O. R. 375 not followed.

The proper course where the magistrate is interested is to apply for a prohibition.

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

The justice of the peace before whom the information was laid and who issued the summons was claimed to be interested. The hearing, however, took place before and the adjudication and conviction were made by another justice whose qualification was not attacked. The defendant pleaded to the charge and raised no objection to the validity of the proceedings until the *certiorari* was applied for. And the court held that even assuming that the act of the justice who took the information was illegal, the defendant had waived the objection by appearing and pleading without raising the question of interest. R. v. Stone, 23 O. R. 46; see R. v. Clarke, 20 O. R. 642.

"The Trade Unions Act," R. S. C. c. 131, s. 21, disqualifies the master, or the father, son or brother of a master in the particular trade or business in, or in connection with which any offence under this Act is charged to have been committed from acting as a justice of the peace, or being a member of any court hearing any appeal under the Act. There is a similar provision in the Act respecting threats, intimidation and other offences. R. S. C. c. 173, s. 12, s-s. 5.

The clerk to the justices should not act as solicitor for one of the parties on a prosecution before his own bench of justices, but

such an interest in the clerk does not affect the jurisdiction of the bench. R. v. Brakenridge, 48 J. P. 293 D. See R. S. O. c. 72, s. 27.

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

At the hearing of a summons for an offence under the "Fishery Acts," one of the magistrates was interested in the decision and sat on the bench. He stated openly in the court that he should take no part in the hearing of the case, but made an observation in the course of the case that he could prove a material fact in the controversy. He also remained and was present at the consultation of the magistrates. He stated that he took no part in the matter except as above, and that he did not vote upon the decision of the case. Notwithstanding this disclaimer the court held that he took such a part in the hearing as invalidated the conviction. R. v. O'Grady, 7 Cox, 247. But from the mere fact of a justice who is interested sitting on the bench during the hearing of the case, but taking no part therein, and making an audible and distinct declaration that he did not intend to take any part in the proceedings, they will not be invalidated. R. v. Justices, Tyrone, 2 L. T. R. N. S. 639; 12 Ir. C. L. R. 91. But where it appeared on an appeal from a refusal to grant a license that one of the justices who refused a license was present on the bench, and during the hearing conversed with some of the magistrates, but not on any matter relating to the appeal, nor did he act in the hearing or determination thereof; it was held nevertheless that being present he formed part of the court, and the order of sessions was invalid. R. v. Justices, Surrey, 1 Jur. N. S. 1138.

A magistrate having on the hearing of a complaint for trespass to a fishery, remained on the bench during its progress, admitting that he was interested in the subject matter of the complaint, and stating from the bench that he could prove that other persons than the one complained against had been fined for fishing in the *locus in quo*, and after the court was cleared of the public, remaining with his brother magistrates until a decision was arrived at, acts mistakingly and improperly, and a decision come to by the bench

of magistrates under such circumstances is censurable, and will be reviewed by the court. R. v. Massey, 7 Ir. L. R. 211.

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

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

A justice employed in any capacity for the prosecution or detection or punishment of offenders is guilty of an indictable offence if he corruptly accept or obtains or agrees to accept or attemps to obtain for himself or for any other person any money or valuable consideration, office, place or employment, with the intent to interfere corruptly with the due administration of justice, or to procure or facilitate the commission of any crime or to protect from detection or punishment, any person having committed or intending to commit any crime. Code, s. 132.

Justices of the peace are responsible in damages where they act illegally and maliciously *e. g.* in committing a person to gaol for refusal as a witness to answer a question at a trial which had taken place before them, the order of imprisonment being signed out of court some days after the termination of the trial and under circumstances indicating malice. Gauvin v. Moore, 7 Mont. S. C. 376.

The court will in general grant a criminal information against justices for any gross act of oppression committed by them in the exercise or pretended exercise of their duties as justices, and whenever there can be shown any vindictive or corrupt motive. See R. v. Cozens, 2 Doug. 426; R. v. Somersetshire, 1 D. & R. 442. The misconduct must have arisen in connection with his public duties. R. v. Arrowsmith, 2 Dowl. N. S. 704. And where a

criminal information is applied for against a magistrate for improperly convicting a person of an offence the court will not entertain the motion, however bad the conduct of the magistrate may appear, unless the party applying make oath that he is not really guilty of the offence of which he was convicted. R. v. Webster, 3 T. R. 388. And indeed in all cases of an application for a criminal information against a magistrate for anything done by him in the exercise of the duties of his office, the question has always been not whether the act done might, upon a full and mature investigation, be found strictly right, but from what motive it had proceeded, whether from a dishonest, oppressive or corrupt motive, or from mistake or error, in the former case alone they have become the objects of punishment. R. v. Brown, 3 B. & Ald. 432-4.

It is to be observed that the Code does not prevent the prosecution by indictment of a justice of the peace for any offence, the commission of which would subject him to indictment at the time of the coming into force of this Act, s. 905.

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

Where the notice is to answer the application within four days after the service of the notice, it will not suffice, though the motion is not actually made until the six days have expired. The application must not (when the misconduct occurs before the term) be made so late in the term that the magistrate cannot answer it the same term, because the pendency of such a motion might affect his influence as magistrate in the meantime. R. v. Heustis, 1 James, 101.

Justices of the peace acting judicially in a proceeding in which they have power to fine and imprison, are judges of record, and have power to commit to prison orally without warrant for contempt committed in the face of the court. Armstrong v. McCaf-

frey, 1 Hannay, 517; Ovens v. Taylor, 19 C. P. (Ont.) 53. Thus if the justice be called "a rascal and a dirty mean dog," "a damned lousy scoundrel," "a confounded dog," etc., the justice has a right to imprison as often as the offence is committed. R. v. Scott, 2 U. C. L. J. N. S. 323.

But if the decision in Young v. Saylor, 23 O. R. 513 is not reversed on appeal, this authority must be understood as being confined to those exercising the plenary powers conferred by s. 908 of the Code. And the fact that the latter section expressly grants special powers to those named therein seems to rebut the conclusion that a single justice of the peace has all the powers of a police or stipendiary magistrate.

In the case referred to a barrister and solicitor while acting as counsel for certain persons charged with an offence before a justice of the peace holding court under the "Summary Convictions Act" was arrested by a constable by the order of the justice, and without any formal adjudication or warrant excluded from the court room and imprisoned for an alleged contempt and for disorderly conduct in court. It was held, in an action against the justice and constable for assault, false arrest, and imprisonment, that the justice had no power to punish summarily for contempt in the face of the court, at any rate without a formal adjudication and a warrant setting out the contempt but that he had power to remove persons who by disorderly conduct obstructed or interfered with the business of the court.

The proper exercise of the privilege of counsel in examining witnesses does not constitute an interruption of the proceedings so as to warrant an 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 would not review the facts alleged therein but there being no warrant the justice was bound to establish such facts as would justify his course. Young v. Saylor, 23 O. R. 513.

The justice in this case did not come within the description of persons to whom power to preserve order is given by s. 908 of the Code, if he had, the case would have been otherwise.

The justice while discharging his duty has power to protect himself from insult and to repress disorder, by committing for contempt any person who shall violently or indirectly interrupt his proceedings, and the justice may, upon view and without any formal proceedings, order at once into custody any person obstructing the course of justice, or he may commit him until he find sureties for the peace. But the justice has no power at the time of the misconduct, much less on the next day, to make out a warrant to a constable, and to commit the party to gaol for any certain time by way of punishment without adjudging him formally after a summons to appear for hearing to such punishment on account of his contempt and a hearing of his defence and making a minute of the sentence. *Re* Clarke, 7 Q. B. (Ont.) 223; see also, Jones v. Glasford, R. & J. Dig. 1974.

It has been doubted whether a justice of the peace executing his duty in his own house, and not presiding in any court, can legally punish for a contempt committed there. McKenzie v. Mewburn, 6 O. S. 486. But s. 908 of the Code expressly gives to any judge of sessions of the peace, police district or stipendiary magistrate, such and the like powers and authority to preserve order in said courts, and by the like ways and means as now by law are or may be exercised and used in like cases and for the like purposes by any court of law in Canada; or by the judges thereof respectively during the sittings thereof, and by s. 909 in all cases where any resistance is offered to the execution of any summons, warrant of execution, or other process issued by him the due execution thereof may be enforced by the means provided by the law for enforcing the execution of the process of other courts in like cases.

It is to be observed that s. 585 of the Code gives the justice power by warrant to commit for contempt any person refusing to be sworn or to answer such questions as are put to him, or refusing or neglecting to produce any documents or to sign his depositions.

Justices should be careful not to abuse their position; and by either knowing their powers or in ignorance of them inflict a wrong upon a party or witness, or maliciously punish him by the use of insulting and improper language. Where language of this character is used without any legal justification, exemplary damages will

be given against the justice. Clissold v. Machell, 25 Q. B. (Ont.) 80; affirmed in appeal, 26 Q. B. (Ont.) 422.

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

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

An action will not lie against a judge for anything done by him in his judicial capacity, and within his jurisdiction, although there may be an improper exercise of jurisdiction. See Dickerson v. Fletcher, Stuart, 276; Gugy v. Kerr, Stuart, 292; Garner v. Coleman, 19 C. P. (Ont.) 106; Agnew v. Stewart, 21 Q. B. (Ont.) 306. And from the opinion of the court in Garner v. Coleman, *supra*, and Scott v. Stansfield, L. R. 3 Ex. 320; 18 L. T. N. S. 572; it would seem that no action at law can be maintained against a judge of a Court of Record for anything done in his judicial capacity, though there is malice and a want of reasonable and probable cause. The court do not say that the judge is not amenable to punishment by impeachment in parliament, but seem disposed to protect him from an action before a jury. The general rule is that a justice like other judges is not liable for any mistake or error of judgment, or for anything he does judicially when acting within his jurisdiction, though he may be wrong. Garnett v. Farrand, 6 B. & C. 611; Mills v. Collett, 6 Bing. 85; Roy v. Page, 27 L. C. J. 11.

Where a justice of the peace acts judicially in a matter in which by law he has jurisdiction, and his proceedings appear to be good upon the face of them, no action will lie against him or if an action be brought, the proceedings themselves will be a sufficient justifi-

cation. See Brittain v. Kinnaird, 1 Brod. & B. 432; Fawcett v. Fowles, 7 B. & C. 394. If, therefore, an action of trespass be brought against magistrates for convicting a person and causing him to be imprisoned in a case where the magistrate had jurisdiction, the plaintiff must be non-suited if a valid and subsisting conviction be adduced and proved. Stamp v. Sweetland, 14 L. J. M. C. 184; Mould v. Williams, 5 Q. B. 469; or, if the conviction has been quashed, then case, not trespass, is the form of action that ought to be adopted. Baylis v. Strickland, 1 Man. & Gr. 59. All this is now fully declared in Ontario, by the R. S. c. 73.

What we have hitherto been considering have been actions against justices for something done by them in their judicial character. For what they do in their ministerial character without reference to their judicial authority, their power of justifying will depend in a great measure upon the legality of the proceedings upon which these acts are founded. See Weaver v. Price, 3 B. & Ad. 409. Thus, if the justice exceeds the authority the law gives him in his ministerial acts, he thereby subjects himself to an action as if he commit a prisoner for re-examination for an unreasonable time, although he do so from no improper motive, he is liable to an action for false imprisonment. Davis v. Capper, 10 B. & C. 28. So if he commit a man for a supposed crime where there has in fact been no accusation against him, he is liable to an action of trespass for false imprisonment, Morgan v. Hughes, 2 T. R. 225; but if he commit him for a reasonable time, although the statute under which he is acting gives him no authority to do so, he is not liable to an action, for authority so to commit is given to justices. Gelan v. Hall, 27 L. J. M. C. 78; Haylock v. Sparke, 4 E. & B. 471; Linford v. Fitzroy, 13 Q. B. 240.

When property or title is in question, the jurisdiction of justices of the peace to hear and determine in a summary manner is ousted, and when a *bona fide* claim is made, the justices have no jurisdiction and ought not to convict. R. v. Cridland, 7 E. & B. 853. It is not sufficient to take away their jurisdiction that the defendant *bona fide* believed that he had a right, it is for the justices to decide, if the claim of right is fair and reasonable, and if they hold that it is not, they are bound to go on and decide

the case, R. v. Musset, 26 L. T. N. S. 429, but if the matter is doubtful, it will be enough to stop their proceedings, and they cannot give themselves jurisdiction by a false decision. R. v. Nunnely, E. B. & E. 852. When in order to constitute an offence there must be a *mens rea* or criminal intention, an honest claim of right, however absurd, will frustrate a summary conviction; but where the absence of *mens rea* is not necessarily a defence, the person who sets up a claim of right must show some ground for its assertion, and if he fails to do so, is liable to be convicted of the offence charged against him. Watkins v. Major, L. R. 10 C. P. 662.

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

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

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

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

The mere assertion by the defendant of a general right, though he really believes it does not oust the jurisdiction, such a claim as would be a defence to an action of trespass, not being shewn. Leatt v. Vine, 8 L. T. R. N. S. 581. It seems that there must be some colour for the claim of title, and the title must be claimed to be in the party charged, and not in a third person. *Ex parte* Cayen, 17 L. C. J. 74; Cornwell v. Sanders, 3 B. & S. 206; Rees v. Davies, 8 C. B. N. S. 56.

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

The magistrate's jurisdiction is only to enquire into the good faith of the parties alleging title. The defendant was convicted under a statute which provided that nothing in the Act contained should extend to any case where the party acted under a fair and reasonable supposition that he had a right to do the act complained of, and it appeared in the evidence before the magistrate that there was a dispute between the parties as to the ownership. The court held that the title to land came in question, and that the defendant had been improperly convicted, even though the magistrate did not believe that the defendant had a title. R. v. Davidson, 45 Q. B. (Ont.) 91. In a prosecution under the R. S. C. c. 168, s. 24; s. 508 of the Code for an injury to growing trees to the amount of twenty-five cents, the defendant set up and proved a *bona fide* claim of title, and the court held that the jurisdiction of the justice was ousted. R. v. O'Brien, 5 Q. L. R. 161.

But where the defendants were summoned for trespass upon a fishery, and they gave evidence of long user and claimed a right to fish therein and offered security for costs in case the plaintiff would institute a civil action, it was held that this was such a *bona fide* claim of title as ousted the jurisdiction of the magistrates. R. v. Magistrate, Bally Castle, 9 L. T. R. N. S. 88. And where the defendant shewed that he had fished for many years without interruption, and no prosecution had been instituted against anyone for so doing, it was held that there was reasonable evidence to shew that the question of title raised by the defendant was *bona fide* and that therefore the justice had no jurisdiction. R. v. Simpson, 4 B. & S. 301.

Belief of a right to do the act is not a defence to rioters who unlawfully and with force damage any buildings. Code, s. 86.

Under s. 842, s-s. 8, no justice shall hear and determine any case of assault and battery on which any question arises as to the title to any lands, tenements, hereditaments or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice.

The offence of wilfully commiting damage, injury or spoil to any real or personal property cannot be committed if the person

acted under a fair and reasonable supposition that he had a right to do the act complained of. Code s. 511, s-s. 2 (a).

Everyone who is in peaceable possession of any moveable property or thing under a claim of right, and every one acting under his authority is protected from criminal responsibility for defending such possession even against a person entitled by law to the possession of such property or thing if he uses no more force than is necessary. Code, s. 49. But the case is otherwise if the person in peaceable possession of the property, &c., neither claims right thereto nor acts under the authority of a person claiming right thereto. Code, s. 50; see also ss. 51, 52, 53 and 54.

The prisoner was charged before justices with receiving stolen goods, namely one bedstead, knowing the same to be stolen. The prisoner claimed to be the owner of the property, but was found guilty by the justices and in consideration that he would not be sent to gaol assented to the following agreement.

"Memo, conviction made.

Defendant to be discharged from conviction on restitution of the bedstead in 48 hours and on payment of costs of court and $50 damages to the prosecutor within fifteen days, no appeal or proceedings to be taken against this conviction.

A. G. H. *J. P.* A. D. L. (*prisoner*)."

On an application for a *certiorari* it was held that the court would look at the depositions to ascertain whether there was a criminal offence committed, and here there was a *bona fide* claim of title in the prisoner which should have ousted the jurisdiction of the justices. The court held that the agreement was not binding on the prisoner even after part performance. There was no valid consideration for such an agreement and it was illegal and void and the action of the justice was an abuse of the process provided by the criminal law. R. v. Lacoursiere, 3 W. L. T. 33, affirmed in appeal; *Ib.* 132, 8 M. R. 302.

In Ontario, R. S. c. 73, s. 6, provides that in any case where a justice of the peace refuses to do any act relating to the duties of his office, an application may be made to a judge for an order com-

pelling him to do the act. The proper course where justices refuse without good cause to act, according to the duties of their office is to proceed under this Act. *Re* Delaney v. McNabb, 21 C. P. (Ont.) 563.

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

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

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

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. Justices of the peace have not now and never had jurisdiction by the criminal procedure to hear charges of a criminal nature against corporations. Although the word "person" in the R. S. C. c. 1, s. 7, s-s. 22 means corporation for certain purposes it does not include corporations in cases where a justice of the

peace is attempting to exercise criminal jurisdiction. A justice of the peace cannot compel a corporation to appear before him nor can he bind them over to appear and answer to an indictment, and he has no jurisdiction to bind over the prosecutor or person who intends to present an indictment against them. *Re* Chapman, 19 O. R. 33; see also R. v. Brown, 16 O. R. 41-46.

By s. 635 of the Code the procedure is by presenting an indictment before the grand jury.

PART XLIV.

COMPELLING APPEARANCE OF ACCUSED BEFORE JUSTICE —PRELIMINARY INQUIRIES.

553. For the purposes of this Act, the following provisions shall have effect with respect to the jurisdiction of justices:

(*a*) Where the offence is committed in any water, tidal or other, between two or more magisterial jurisdictions, such offence may be considered as having been committed in either of such jurisdictions;

(*b*) Where the offence is committed on the boundary of two or more magisterial jurisdictions, or within the distance of five hundred yards from any such boundary, or is begun within one magisterial jurisdiction and completed within another, such offence may be considered as having been committed in any one of such jurisdictions;

(*c*) Where the offence is committed on or in respect to a mail, or a person conveying a post letter bag, post letter or anything sent by post, or on any person, or in respect of any property, in or upon any vehicle employed in a journey, or on board any vessel employed on any navigable river, canal or other inland navigation, the person accused shall be considered as having committed such offence in any magisterial jurisdiction through which such vehicle or vessel passed in the course of the journey or voyage during which the offence was committed: and where the centre or other part of the road, or any navigable river, canal or other inland navigation along which the vehicle or vessel passed in the course of such journey or voyage is the boundary of two or more magisterial jurisdictions the person accused of having committed the offence may be considered as having committed it in any one of such jurisdictions.

The Code takes effect on the first day of July, 1893. *Ib.* s. 2.

The provisions of the Code extend to and are in force in the North West Territories and the District of Keewatin, except in so far as they are inconsistent with the provisions of the North West Territories Act or The Keewatin Act and the amendments thereto.

But nothing in the Code shall affect any of the laws relating to the government of Her Majesty's land or naval forces. Code, s. 983.

By the 56 V. c. 32, amending s-s. 2 of s. 981 of the Code, it is provided that the provisions of this Act which relate to procedure,

shall apply to all prosecutions commenced on or after the day upon which this Act comes into force in relation to any offence whensoever committed. The proceedings in respect of any prosecution commenced before the said date, otherwise than under the Summary Convictions Act, shall up to the time of committal for trial be continued as if this Act had not been passed, and after committal for trial shall be subject to all the provisions of this Act relating to procedure so far as the same are applicable thereto. The proceedings in respect of any prosecutions commenced before the said day under the Summary Convictions Act, shall be continued and carried on as if this Act had not been passed.

See s. 551 of the Code as to the time within which prosecutions for various offences must be commenced. The laying of the information is the commencement of the prosecution. See *ante p.* 18.

If a person brought up under that part of the Code relating to the summary trial of indictable offences s. 782, elects to be tried by a jury in a case in which his consent is necessary then the magistrate must proceed to hold a preliminary inquiry as provided in Parts XLIV. and XLV. and if the person charged is committed for trial shall state in the warrant of committal the fact of such election having been made, s. 792. See ss. 804-805 and 808 of the Code as to the extent to which the provisions of this Act relating to preliminary inquiries before justices and particularly ss. 586 and 587 apply to the case of a summary trial under s. 783 and the following sections. Under that part of the Code relating to the trial of juvenile offenders for indictable offences (s. 809) if the person charged objects to a trial by the justices, or if they are of opinion before the person charged has made his defence that the charge is from any circumstance a fit subject for prosecution by indictment, or if the person charged objects to the case being summarily disposed of then the justices must proceed to hold a preliminary inquiry only under the provisions of Parts XLIV. and XLV. See ss. 813-814. And the provisions of these Parts relating to compelling the appearance of the accused, the attendance of witnesses and the taking of evidence shall so far as the same are applicable apply to all proceedings for the purposes of summary conviction. See Code, s. 843.

But when a warrant is issued in the first instance, the justice issuing it shall furnish a copy or copies and cause a copy to be served on the person arrested at the time of such arrest. Code s. 843.

After the commencement of this Act no civil remedy for any act or omission shall be suspended or affected by reason that such act or omission amounts to a criminal offence. Code s. 534. The distinction between felony and misdemeanour shall be abolished, and proceedings in respect of all indictable offences (except so far as they are herein varied) shall be conducted in the same manner. Code s. 535. The word "herein" refers to the whole Act. See R. S. C. c. 1, s. 7, s-s. 5. Every Act shall be hereafter read and construed as if any offence for which the offender may be prosecuted by indictment (howsoever such offence may be therein described or referred to) were described or referred to as an "indictable offence," and as if any offence punishable on summary conviction were described or referred to as an "offence," and all provisions of this Act relating to "indictable offences" or "offences" (as the case may be) shall apply to every such offence.

Every commission, proclamation, warrant, or other document relating to criminal procedure in which offences which are indictable offences or offences (as the case may be) as defined by this Act are described or referred to by any names whatsoever shall be hereafter read and construed as if such offences were therein described and referred to as indictable offences or offences (as the case may be). Code, s. 536.

Every court of criminal jurisdiction in Canada is, subject to the provisions of Part XLII., competent to try all offences wherever committed, if the accused is found or apprehended or is in custody within the jurisdiction of such court, or if he has been committed for trial to such court or ordered to be tried before such court, or before any other court the jurisdiction of which has by lawful authority been transferred to such first mentioned court under any Act for the time being in force: Provided that nothing in this Act authorizes any court in one province of Canada to try any person for any offence committed entirely in another province, except in the following case:

2. Every proprietor, publisher, editor or other person charged with the publication in a newspaper of any defamatory libel, shall be dealt with, indicted, tried and punished in the province in which he resides, or in which such newspaper is printed. Code, s. 640.

The words "wherever committed" in this section do not give jurisdiction over an offence committed outside of Canada. See MacLeod v. Attorney-General, 17 Cox, 341.

Part XLII. refers to the jurisdiction of the court of general or quarter sessions of the peace. This section to a large extent abolishes the old law of venue.

Under s. 553 of the Code, where the blow is given in one county and the death takes place in another, the trial may be in either of these counties. 1 Russ. 573.

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

As to venue in British Columbia prior to the Code, see Mallot v. R., 2 B. C. R. 212; Sproule v. R., *Ib.* 219.

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

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

Any offence against the provisions of the "Fisheries Act" committed in upon or near any waters forming the boundary between different counties or districts or fishery districts may be prosecuted before any justice of the peace in either of such counties or districts. R. S. C. c. 95, s. 17, s-s. 3.

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

The 11 Geo. II. c. 19, against the fraudulent removal of goods by tenants empowers the landlord to exhibit a complaint before two justices of the county, etc., "residing near the place whence such goods were removed or near the place where the same are found." Under these words it has been held that if the goods be removed out of one county into another the complaint may be made to two justices of the latter county. R. v. Morgan, Cald. 158.

There is no doubt that a statute may empower a justice to act beyond the limits of his jurisdiction as assigned by his commission. Thus under s. 5 of the R. S. C. c. 149, respecting the seizure of

arms kept for dangerous purposes, all justices of the peace for any district, county, or place in Canada, have concurrent jurisdiction as justices of the peace with the justices of any other district, county, or place, in all cases as to carrying into execution the provisions of the Act as fully and effectually as if each of such justices was in the commission of the peace for such other district, county or place.

554. Every justice may issue a warrant or summons as hereinafter mentioned to compel the attendance of an accused person before him, for the purpose of preliminary inquiry in any of the following cases:

(*a*) If such person is accused of having committed in any place whatever an indictable offence triable in the province in which such justice resides, and is, or is suspected to be, within the limits over which such justice has jurisdiction, or resides or is suspected to reside within such limits;

(*b*) If such person, wherever he may be, is accused of having committed an indictable offence within such limits;

(*c*) If such person is alleged to have anywhere unlawfully received property which was unlawfully obtained within such limits;

(*d*) If such person has in his possession, within such limits, any stolen property.

The words "in any place whatever" in s-s. (*a*) are new. Under s. 30 of the R. S. C. c. 174, it was necessary that the offender should have committed the offence within the limits of the justices jurisdiction, or that he should reside or be within such limits.

The object of the last line in s-s. (*a*) is not clear. It would seem to be covered by the first four lines of the sub-section.

The words "being within the jurisdiction of such justice," in s. 13 of the R. S. C. c. 178, were interpreted to refer to the time when the offence or act was committed and not to the time when the information was laid. Therefore a conviction could not be quashed on the ground that the defendant left the jurisdiction after the offence was committed and was not within it when the information was laid. R. v. Bachelor, 15 O. R. 641.

But the clause now under consideration contemplates the commission of an offence either within or without the jurisdiction of the justice.

In certain cases the consent of the attorney-general is necessary before a person shall be prosecuted. Thus the offences (1) of

unlawfully obtaining and communicating official information; (2) of judicial corruption; (3) of making or having explosive substances; (4) of criminal breach of trust by a trustee; (5) of concealing deeds and encumbrances and (6) of uttering defaced coin, all require the consent of the Attorney-General. Code, ss. 543, 544, 545, 547, 548, 549.

And no one can be prosecuted for any offence under s. 256 or 257 without the consent of the minister of marine and fisheries. Code, s. 546 amended by the 56 V. c. 32.

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

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

3. Any person accused or convicted of any offence in any such provisional district may be committed to any common gaol in the Province of Ontario; and the constable or other officer having charge of such person and intrusted with his conveyance to any such common gaol, may pass through any county in such province with such person in his custody; and the keeper of the common gaol of any county in such province in which it is found necessary to lodge for safe keeping any such person so being conveyed through such county in custody, shall receive such person and safely keep and detain him in such common gaol for such period as is reasonable or necessary; and the keeper of any common gaol in such province, to which any such person is committed as aforesaid, shall receive such person and safely keep and detain him in such common gaol under his custody until discharged in due course of law, or bailed in cases in which bail may by law be taken. R S. C. c. 174, s. 14.

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

been committed, and if imprisoned in the common gaol after trial he shall be so imprisoned in the common gaol of the county in which he has been tried. R. S. C. c. 174, s. 15.

A person charged with a crime committed in one division of a county may be committed for trial by the justices acting for any other division of the same county, they having jurisdiction through the whole county. R. v. Beckley, 20 Q. B. D. 187.

557. The preliminary inquiry may be held either by one justice or by more justices than one: Provided that if the accused person is brought before any justice charged with an offence committed out of the limits of the jurisdiction of such justice, such justice may, after hearing both sides, order the accused at any stage of the inquiry to be taken by a constable before some justice having jurisdiction in the place where the offence was committed. The justice so ordering shall give a warrant for that purpose to a constable, which may be in the form A in schedule one hereto, or to the like effect, and shall deliver to such constable the information, depositions and recognizances if any taken under the provisions of this Act, to be delivered to the justice before whom the accused person is to be taken, and such depositions and recognizances shall be treated to all intents as if they had been taken by the last-mentioned justice.

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

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

This section embodies the provisions of ss. 86 to 91 of the R. S. C. c. 174.

The preliminary inquiry referred to in s. 792 of the Code can be held only by a person who answers to the description of a "magistrate" as defined by s. 782.

Although under this section the justice may send the accused to the place where the offence was committed, it does not appear to be obligatory upon him to do so. And in view of the provisions of s. 640 of the Code, *ante* p. 45-6, giving jurisdiction to any court in the province to which the accused has been committed for trial, it seems to be the duty of the justice in committing for trial to consider the convenience of the parties and witnesses and the other

circumstances which influence the court on an application to change the venue.

558. Any one who, upon reasonable or probable grounds, believes that any person has committed an indictable offence against this Act may make a complaint or lay an information in writing and under oath before any magistrate or justice of the peace having jurisdiction to issue a warrant or summons against such accused person in respect of such offence.

2. Such complaint or information may be in the form C in schedule one hereto, or to the like effect.

The expressions "indictment" and "count" respectively include information. Code, s. 3 (*l*). And under s. 609 of the Code, it shall not be necessary to state any venue in the body of any indictment and the district, county or place named in the margin thereof, shall be the venue for all the facts stated in the body of the indictment; but if local description is required such local description shall be given in the body thereof. R. S. C. c. 174, s. 104.

The form (*c*) of information given in schedule one to this Act does not show how the particular offence is to be described, but the description necessary in indictments will suffice as "indictment" and "count" respectively include information; see R. v. Cavanagh, 27 C. P. (Ont.) 537; see Code, ss. 611-613 and 846 and the form FF in the schedule.

Section 609 of the Code was held to extend to the inquisition of a coroner which need not show in the body the place where the alleged murder was committed. R. v. Winegarner, 17 O. R. 208.

The information must be in writing and under oath and it must set forth facts disclosing an offence, and there is no right to issue a warrant where assuming the facts sworn to be true, no offence is shown; see *ex parte* Boyce, 24 S. C. N. B. 347.

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

So if a justice, after an offender is brought before him on a warrant, commits him for trial where there is no prosecutor, no examination of witnesses and no confession of guilt under the

statute, he is liable in trespass. Appleton v. Lepper, 20 C. P. (Ont.) 138; Connors v. Darling, 23 Q. B. (Ont.) 541.

To give the magistrate jurisdiction there must be either an information for a criminal offence or the information must be waived by the accused. Crawford v. Beattie, 39 Q. B. (Ont.) 26; Caudle v. Seymour, 1 Q. B. 889; R. v. Fletcher, L. R. 1 C. C. R. 320; or the accused must be in the presence of the magistrate and while there be charged with the offence and must then submit to answer it. See R. v. Hughes, L. R. 4 Q. B. D. 614.

The warrant of a magistrate is only *prima facie*, not conclusive evidence of its contents, and though a warrant recites the laying of an information, and though in an action against the magistrate it is put in on behalf of the plaintiff, still the recital of the information is not conclusive, and evidence may be given to show that such information was not in fact laid. Friel v. Ferguson, 15 C. P. (Ont.) 584.

Even where an information is properly laid, if the offence is not committed within the limits of the justice's jurisdiction the offender must reside or be within such limits. See Code, s. 554 (*a*).

Or it must appear that the property which he is alleged to have anywhere unlawfully received is in the possession of the offender, in the county for which the magistrate acts when he issues his warrant. See McGregor v. Scarlett, 7 P. R. (Ont.) 20. Code, s. 554 (*c*) and (*d*).

The commission of an offence within the justice's jurisdiction gives him authority, on an information properly laid, to issue his summons or warrant, though the offender at the time the information is laid has departed from the county or place in which the justice acts. See Code, s. 554 (*b*). In case of fresh pursuit the offender may be apprehended at any place in an adjoining territorial division, and within seven miles of the border of the first-mentioned division. See Code, s. 564. In other cases the warrant may be backed so as to authorize the apprehension of the offender at any place in Canada out of the jurisdiction of the justice issuing the warrant. See Code, s. 565.

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

An information for false pretences is not objectionable for not setting out the false pretences with which the defendant is charged, if it follows the form in which an indictment for the same offence may be framed. R. v. Richardson, 8 O. R. 651. In any case, s. 578 of the Code would cure the defect. *Ib.*

Where the prisoner was charged with an intent to murder, that prior to the enactment of the Code meant the doing of some act feloniously and of malice aforethought and the information was required to allege that the act was done with such intent. R. v. Bulmer, 33 L. C. J. 57. See now ss. 227, 609, 611 of the Code.

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

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

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

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

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

An information which stated that A. B. had neglected to return a gun which had been lent to him, and for which he had been

repeatedly asked, was not construed as charging criminality. McDonald v. Bulwer, 11 L. T. N. S. 27.

In the schedule of forms FF will be found examples of the manner of stating offences in popular language. According to this form it would now be sufficient in an information for murder to state that A. murdered B. at on or for theft that A. stole a sack of flour from a ship called the at on &c.

It seems that the informant must pledge his oath to that which would constitute an offence assuming the oath to be true. And an information stating that the complainant has just cause to suspect and believe, and does suspect and believe that the party charged has committed an offence, will not authorize the issue of a warrant in the first instance, for such information shows no offence. *Ex parte* Boyce, 24 S. C. N. B. 347.

559. Upon receiving any such complaint or information the justice shall hear and consider the allegations of the complainant, and if of opinion that a case for so doing is made out he shall issue a summons, or warrant as the case may be, in manner hereinafter mentioned; and such justice shall not refuse to issue such summons or warrant only because the alleged offence is one for which an offender may be arrested without warrant. R. S. C. c. 174, s. 30.

The justice who issues the summons should also hear the complaint. See Dixon v. Wells, 20 Q. B. D. 249 *ante p.* 17. This section is express that the justice shall hear and consider the allegations of the complainant.

The R. S. C. c. 174, s. 40 provided that a justice might issue the summons or warrant "if he thinks fit." This gave the justice a discretion in the issuing of the summons or warrant, but he was bound to exercise this discretion on the evidence of a criminal offence which the information disclosed, and if on a consideration of something extraneous or extra judicial he refused the summons or warrant, the court would order him to issue it. R. v. Adamson, L. R. 1 Q. B. D. 201. See s. 853 of the Code.

On a reference to the form of the summons and warrant and to s. 563, s-s. 3 of the Code under which the warrant may order the officer to whom it is directed to bring the offender either before the justice issuing the warrant or before some other justice, it would appear that the power to finally dispose of the case does not belong

exclusively to the justice taking the information and granting the summons or warrant. See R. v. Milne, 25 C. P. (Ont.) 94. In the case of summary convictions the power of some other justice is made clear by s. 842, s-s. 3 and 5 of the Code.

560. Whenever any indictable offence is committed on the high seas, or in any creek, harbour, haven or other place in which the Admiralty of England have or claim to have jurisdiction, and whenever any offence is committed on land beyond the seas for which an indictment may be preferred or the offender may be arrested in Canada, any justice for any territorial division in which any person charged with, or suspected of, having committed any such offence is or is suspected to be, may issue his warrant, in the form D. in schedule one hereto, or to the like effect, to apprehend such person, to be dealt with as herein and hereby directed. R. S. C. c. 174, s. 32.

Proceedings for the trial and punishment of a person who is not a subject of Her Majesty and who is charged with any offence committed within the jurisdiction of the Admiralty of England shall not be instituted in any court in Canada except with the leave of the Governor-General and on his certificate that it is expedient that such proceedings should be instituted. Code, s. 542.

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

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

The courts have no jurisdiction over a foreigner who commits an offence in a foreign ship on the high seas outside of one marine league from the coast. R. v. Serva, 1 Den. 104; R. v. Keyn, 13 Cox, 403. But under the "Imperial Act" 41 and 42 V. c. 73, if an offence is committed within one marine league of the coast whether the offender is or is not a subject of Her Majesty there is jurisdiction. But in the case of a foreigner the leave of the

Governor-General must be obtained for the prosecution except that proceedings before a magistrate to bring the offender to trial may be had before the consent of the Governor-General is obtained.

The "Imperial Act" 12 and 13 V. c. 96, s. 1, enacts that all offences committed upon the sea or within the jurisdiction of the admiralty shall in any colony where the prisoner is charged with the offence or brought there for trial be dealt with as if the offence had been committed upon any water situate within the limits of the colony and within the limits of the local jurisdiction of the courts of criminal jurisdiction of such colony.

Under s. 3 when any person shall die in any colony of any stroke poisoning or hurt given upon the sea or within the limits of the admiralty or at any place out of the colony, the offence may be tried in the colony in all respects as if the same had been wholly committed therein, and when the death is upon the sea the same rule obtains.

See also the "Imperial Acts" 17 and 18 V. c. 104, s. 267; 18 and 19 V. c. 19, s. 21, the 30 and 31 V. c. 124, s. 11, and 53 & 54 V. c. 27, also the Canadian Act, 54 & 55 V. c. 29.

561. Every one who is reasonably suspected of being a deserter from Her Majesty's service may be apprehended and brought for examination before any justice of the peace, and if it appears that he is a deserter he shall be confined in gaol until claimed by the military or naval authorities, or proceeded against according to law. R. S. C. c. 169, s. 6.

2. No one shall break open any building to search for a deserter unless he has obtained a warrant for that purpose from a justice of the peace,—such warrant to be founded on affidavit that there is reason to believe that the deserter is concealed in such building, and that admittance has been demanded and refused; and every one who resists the execution of any such warrant shall incur a penalty of eighty dollars, recoverable on summary conviction in like manner as other penalties under this Act. R. S. C. c. 169, s. 7.

See the form of information to obtain a search warrant in the schedule of forms.

562. Every summons issued by a justice under this Act shall be directed to the accused, and shall require him to appear at a time and place to be therein mentioned. Such summons may be in the form E in schedule one hereto, or to the like effect. No summons shall be signed in blank.

2. Every such summons shall be served by a constable or other peace officer upon the person to whom it is directed, either by delivering it to him personally

or, if such person cannot conveniently be met with, by leaving it for him at his last or most usual place of abode with some inmate thereof apparently not under sixteen years of age.

3. The service of any such summons may be proved by the oral testimony of the person effecting the same or by the affidavit of such person purporting to be made before a justice.

The provision against signing in blank is new so also is the requirement that when left at the last or most usual place of abode it must be with some inmate thereof apparently not under sixteen years of age.

The same rule prevails in cases of summary jurisdiction. See Code s. 796, and on the trial of juvenile offenders, Code s. 818.

A wife who carries on business for her husband in his absence, may be served at such place of business for the husband, and such service will be good service on the husband. R. v. McCauley, 14 O. R. 643.

The delivery may be to a person on the premises apparently residing there as a servant, and the constable would do well to explain the nature of the summons to the person with whom it is left. R. v. Smith, L. R. 10 Q. B. 604.

The words "last or most usual place of abode" mean present place of abode if the party has any and the last which he had if he has ceased to have any. *Ex parte* Rice, Jones, 1 L. M. & P. 357. Place of business is in general a place of abode within statutes providing for service of notices. Mason v. Bibby, 33 L. J. M. C. 105; Flower v. Allen, 2 H. & C. 688.

If the summons cannot be personally served it must be left for the party at his present place of abode, if he have one, or if not then at his last place of abode. R. v. Evans, 19 L. J. M. C. 151; R. v. Higham, 7 E. & B. 557. It should be served a reasonable time before the day appointed in it for his appearance, but it is for the justice to decide whether the summons has been served a reasonable time before or not. Two days or more would generally be deemed reasonable. *Re* Williams, 21 L. J. M. C. 46; *ex parte* Hopwood, 15 Q. B. 121. An objection to the service should be taken at the hearing. R. v. Berry, 23 J. P. 86. The summons must be served by a constable or other peace officer.

The oral testimony of the service of the summons would appear to be given before the justice himself on oath, which he has power to administer. See 56 V. c. 31, s. 22, R. S. C. c. 1, s. 7 (29). The affidavit of service may, it seems, be taken before any justice. A commissioner for taking affidavits has no power to swear to the affidavit of service of the summons. R. v. Golding, 2 Pugs. 385.

The sufficiency of the service is generally a question for the justices to decide. *Re* Williams, 21 L. J. M. C. 46; and the court will not interfere with their decision unless it clearly appears that there was in fact no service. *Ex parte* Jones, 19 L. J. M. C. 151; or that the defendant was not allowed the interval fixed by the particular statute between the service and the time limited for appearance. Mitchell v. Foster, 12 A. & E. 472; or that the justices have mistaken the law as to the kind of service required, and have therefore declined to entertain the matter. R. v. Goodrich, 19 L. J. Q. B. 415. The foregoing rules, however, apply only to those cases where the defendant does not in fact appear, for if he actually appears and pleads, there is no longer any question upon the sufficiency or regularity of the summons, or its service.

Justices ought to be very cautious how they proceed in the absence of a defendant who has been summoned only, unless they have strong ground for believing that the summons has reached him, and that he is wilfully disobeying it; and this rule applies, though by the statute, the summons may be legally served by leaving the same at the last or most usual place of abode of the defendant. The defendant was a fisherman and went to sea in pursuit of his calling on the 9th of March. On the same day a summons for an assault was taken out against him, requiring him to appear to answer the charge upon the 12th. On that day it having been proved that a summons was served on the defendant on the 10th, by leaving it with his mother at his usual place of abode, the justice convicted him in his absence, though it did not appear that the defendant's mother knew the nature of the summons. The defendant returned on the 9th of April, and was arrested under the conviction, but the court held that there was no evidence that a reasonable time had elapsed between the time of the service of the summons and the day for hearing, and that the

justices had therefore no jurisdiction to convict. R. v. Smith, L. R. 10 Q. B. 604.

To force on the trial of a case without giving the defendant time to prepare his defence, is contrary to natural justice, and the conviction will be set aside. In one case a summons was served about 4 p.m. on the 21st of September, calling upon the defendant to appear at 8.30 a.m. on the 22nd, and on the latter day, at 8.15 a.m., two other summonses for similar offences were served requiring the defendant to appear before the magistrate at 9 a.m on the day of service. When the court met, the first case was partially gone into, and before it was closed the prosecutor asked the magistrate to take up the second and third cases. The defendant stated that he had not understood what the second summons meant, as he was served while in the act of leaving home to attend to the first case, and by advice of counsel he refused to plead. The magistrate entered a plea in each case of not guilty and went on with both cases. The defendant and his counsel were in court all the time awaiting completion of the evidence in the first case, but refused in any way to plead or take part in the second and third cases, or to ask adjournment thereof. The magistrate, after taking all the evidence therein, at request of defendant adjourned the first case, and in the second and third cases convicted the defendant. It was shown by affidavit that the magistrate was willing, had the defendant pleaded, to adjourn after taking the evidence of the witnesses present. The court held that the proceedings were contrary to natural justice, as the summonses were served almost immediately before the sittings of the court, which defendant had already been summoned to attend, and the convictions were quashed with costs against the complainant. R. v. Eli, 10 O. R. 727.

Under s. 563 s-s. 4, where the service of the summons has been proved and the defendant does not appear, the warrant (form G.) may issue. The warrant should be issued in every case before conviction whether the service of the summons has been personal or by leaving a copy at the last place of abode. See also R. v. Ryan, 10 O. R. 254.

A defendant was convicted in his absence. No summons was served on him personally or left at his most usual place of abode

(that is his dwelling house) as the statute requires, but a copy was left at his place of business an hour or two before it was returnable, which copy the defendant swore he never received or heard of. The magistrate adjourned the trial until the following Monday, the 2nd December, but no notice of the summons or postponement of the trial was given to the defendant, except that the constable on Saturday evening the 30th November, told defendant he was instructed by Mr. McLellan to inform defendant that his case would come up on Monday at 10 o'clock and that he had left a summons at his place for him. It did not appear who Mr. McLellan was and the court held there was no legal service, and even if it had been a service there was no evidence that a reasonable time elapsed between the service and the time named for appearance. R. v. McKenzie, 23 N. S. R. 6-23.

Where a statute fixed no period for delay between the service and the return of the summons, it was held that a service on the defendant at his domicile, twenty miles from the place where he was by the writ summoned to appear on the following day, at ten o'clock in the forenoon, the service being effected about three o'clock in the afternoon of the day preceding, was not reasonable and the plaintiff could not legally preceed *ex parte*. *Ex parte* Church, 14 L. C. R. 318.

Service of a summons was held sufficient where the door of the defendant's house was fastened and the constable spoke to him through a closed window, explaining the nature of the process and then placed a copy of it under the door, informing the defendant thereof, after which he returned to the window and showed the original summons to the defendant who said, "that will do." *Ex parte* Campbell, 26 S. C. N. B. 590. See also R. v. McCauley, 14 O. R. 643.

The service of a duplicate original of the summons is sufficient. See R. v. McFarlane, 27 S. C. N. B. 529. Under this section it is the duty of a constable to serve the summons, and an assault upon him will render the offender liable for assaulting a constable in the execution of his duty, S. C. 16 S. C. R. 393.

It is important that the constable serving the summons should attend to prove the service, for it would seem, that if the person

served does not appear, the magistrate would have no right either to issue a warrant or to proceed otherwise in the absence of the defendant without proof that he was duly served. See *re* McEachern, 1 Russ. & Geld. N. S. 321.

It seems necessary under section 563 (4) of the Code either that there should be proof of service or that the summons cannot be served.

In a prosecution before the police magistrate of Frederickton in which the defendant did not appear, proof by a policeman that he served a copy of the summons on the defendant personally, and that the defendant resided in Frederickton is sufficient to show a service within the magistrates jurisdiction which is required. Moore v. Sharkey, 26 S. C. N. B. 7.

It is clear from several cases that the taking of an information or the issue of a summons may be waived. On a charge for selling liquor without a license contrary to s. 70 of the R. S. O. c. 194, the defendant appeared before the magistrates, pleaded to the charge and evidence was gone into and the case closed without objection, the defendant convicted and a fine of $50 and costs imposed. An objection raised on a motion to quash the conviction that the information was taken before only one justice of the peace was overruled, it being held to be waived by the defendant's appearance. R. v. Clarke, 20 O. R. 642.

The defendant being present in court on a charge of drunkenness, which was disposed of, was, without any summons having been issued, charged with another offence: namely, of selling liquor without a license. The information was read over to him, to which he pleaded not guilty, and evidence for the prosecution having been given, he thereupon asked for and obtained an enlargement until the next day, when on his not appearing he was convicted in his absence and fined $50 and costs, and the court held that under these circumstances the issuing of a summons was waived. R. v. Clarke, 19 O. R. 601.

See also s. 577 of the Code, which distinctly shows that the accused may appear voluntarily and thus waive information and summons.

Although these cases and the case of R. v. Hughes, 4 Q. B. D. 614, establish the general proposition that when a person is before justices who have jurisdiction to try the case, they need not inquire how he came there but may try it. Yet a statute may require the issue and service of a summons in order to give jurisdiction, and when there is no valid summons and the defendant appears and protests against the jurisdiction he cannot be legally convicted. Thus where an Act provided that "the summons to appear before the magistrate shall be served upon the person charged within a reasonable time, and particulars of the offence or offences and also the name of the prosecutor shall be stated on the summons, and the summons shall not be made returnable in a less time than seven days from the day it is served on the person summoned;" and it appeared that the complaint had been made before two justices and the summons was issued and signed by another justice who had not heard the complaint, it was held that the appearance of the defendant under protest did not cure the defect and that the provisions of the statute in regard to service of the summons were imperative and not merely directory, and as no summons had been duly served the magistrate had no jurisdiction and the conviction was wrong. Dixon v. Wells, 25 Q. B. D. 249.

563. The warrant issued by a justice for the apprehension of the person against whom an information or complaint has been laid as provided in section five hundred and fifty-eight may be in the form F in schedule one hereto, or to the like effect. No such warrant shall be signed in blank.

2. Every such warrant shall be under the hand and seal of the justice issuing the same, and may be directed, either to any constable by name, or to such constable and all other constables within the territorial jurisdiction of the justice issuing it, or generally to all constables within such jurisdiction.

3. The warrant shall state shortly the offence for which it is issued, and shall name or otherwise describe the offender, and it shall order the officer or officers to whom it is directed to apprehend the offender and bring him before the justice or justices issuing the warrant, or before some other justice or justices, to answer to the charge contained in the said information or complaint, and to be further dealt with according to law. It shall not be necessary to make such warrant returnable at any particular time, but the same shall remain in force until it is executed.

4. The fact that a summons has been issued shall not prevent any justice from issuing such warrant at any time before or after the time mentioned in the summons for the appearance of the accused; and where the service of the summons has been

proved and the accused does not appear, or when it appears that the summons cannot be served, the warrant (form G) may issue. R. S. C. c. 174, ss. 43, 44 and 46.

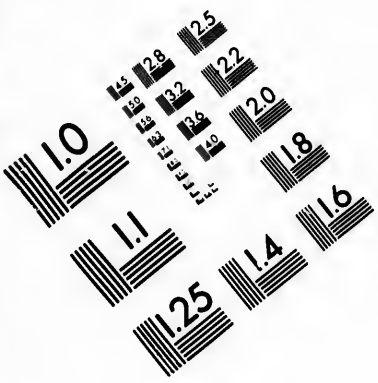
As to protection of one who arrests the wrong person believing in good faith and on reasonable and probable grounds that he is the person named in the warrant. See Code, s. 20. This protection extends to an arrest under a warrant or process bad in law. S. 21. And to an arrest by a peace officer without warrant, s. 22.

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

The provision that the warrant shall not be signed in blank is new. It must be under the hand and seal of the justice issuing the same. It need not be made returnable at any particular time but shall remain in force until executed. A summons however, must name a day for the defendant's appearance.

If the warrant is directed to any person, not a constable, he is not bound to execute it, and is not punishable if he does not execute it, but a constable is bound to execute it if directed to him. See Code, s. 562 (2) under which only a constable can serve a summons.

There are three ways of directing the warrant permitted by s-s. 2 of this section: (1) to any constable by name; (2) to such constable and all other constables within the territorial jurisdiction of the justice issuing it; (3) generally to all constables within such jurisdiction. The latter is the direction adopted in the forms F and G. It meets the case of the offence having been committed within the justices jurisdiction and of the offender having fled therefrom, and where the intention is to have the warrant backed under the 565th section. This direction of the warrant is recommended. It enables the constable to execute the warrant within the jurisdiction of the justice granting it, though the place within which such warrant is executed be not within the place for which he is constable. See s. 564 (2). It also authorizes the execution of the warrant (in case of its being backed under the 565th section),



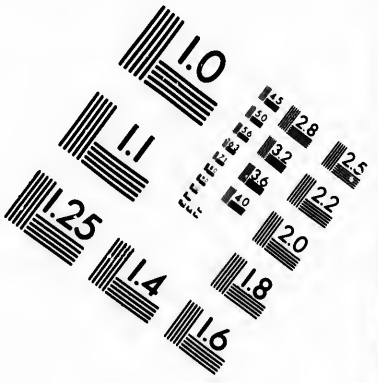
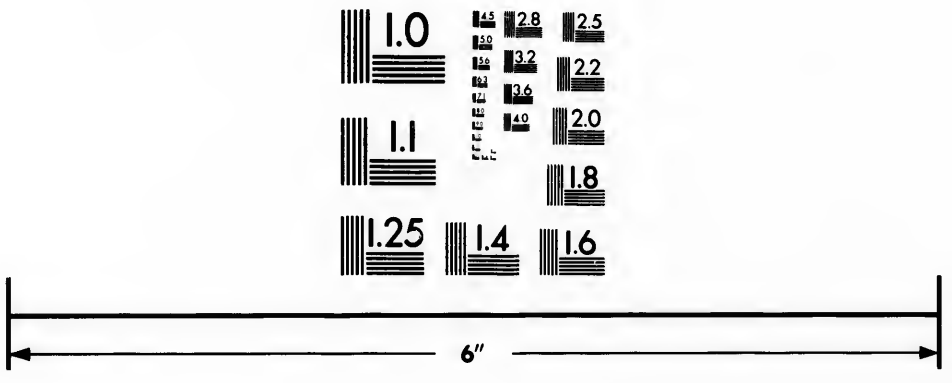
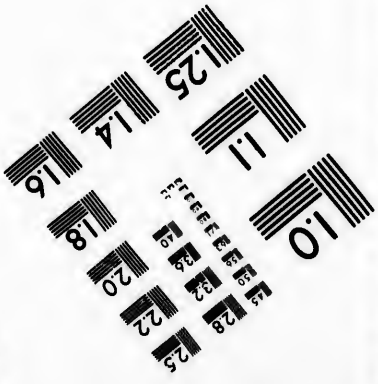


IMAGE EVALUATION
TEST TARGET (MT-3)





Photographic
Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

in any place in Canada where the offender may be found. The latter section authorizes the execution of the warrant by the person bringing it, and all others to whom the same was originally directed, and all constables of the territorial division in which the warrant has been endorsed.

If the warrant is specially directed to the person who is to execute it, or generally to all other constables or peace officers of the division, any person coming within this description may lawfully execute it, but where it is directed to the constable of A. that is the constable of such division. it cannot lawfully be executed by any other person. R. v. Sanders, L. R. 1 C. C. R. 75.

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

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

Though the wording of the Code is substantially the same on this point as sec. 44, of the R S. C. c. 174, on which the above decision proceeded, yet it is submitted that the warrant need not now contain any greater precision than an indictment. See Code, ss. 611 and 613 also the form FF in schedule one, also *ante* p. 51.

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

Where a person is arrested for an indictable offence, any property in his possession believed to have been used by him for the purpose of committing the offence, may be seized and detained as evidence in support of the charge, and if necessary such property may be taken from him by force provided no unnecessary violence is used. Dillon v. O'Brien, 16 Cox, 245.

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

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

Things seized on a search warrant may be detained until the conclusion of the investigation. See Code s. 569, s-s. 4.

As we have already seen under s-s. 3 of this section "some other justice," than the one who issued the warrant may dispose of the case. Under s. 567 of the Code the person arrested may be brought before the justice who issued the warrant or some other justice for the same territorial division, and the indorsement of the warrant under s. 565 of the Code authorizes bringing the offender "before some other justice for the same territorial division."

564. Every such warrant may be executed by arresting the accused wherever he is found in the territorial jurisdiction of the justice by whom it is issued, or, in the case of fresh pursuit, at any place in an adjoining territorial division within seven miles of the border of the first mentioned division. R. S. C. 174, ss. 47 and 48.

2. Every such warrant may be executed by any constable named therein, or by any one of the constables to whom it is directed, whether or not the place in which it is to be executed is within the place for which he is a constable.

3. Every warrant authorized by this Act may be issued and executed on a Sunday or statutory holiday. R. S. C. c. 174, ss. 47 and 48.

The expression "territorial division" includes any county, union of counties, township, city, town, parish or other judicial division or place to which the context applies; R. S. C. c. 174, s. 2 (g), Code s. 3 (zz).

As the Code regulates the procedure in reference to all matters over which the Parliament of Canada has jurisdiction, s-s. 3 of this section should not be limited to warrants authorized "by this Act."

Sub-section 3 of this section does not authorize the issue of a summons on a Sunday; but all persons guilty of indictable offences may be arrested on Sunday. Rawlins v. Ellis, 16 M. & W. 172; 29 Car. 2, c. 7, s. 6; see also s. 729 of the code.

The expression "holiday" includes Sundays, New Year's Day, the Epiphany, Good Friday, the Ascension, All Saints' Day, Conception Day, Easter Monday, Ash Wednesday, Christmas Day, the birthday or the day fixed by proclamation for the celebration of the birthday of the reigning sovereign, Dominion Day, and any day appointed by proclamation for a general fast or thanksgiving. R. S. C. c. 1, s. 7 (26); 56 V. c. 30.

The seven miles referred to in this 564th section are measured not by the nearest practicable road, but by a straight line from point to point on the horizontal plane, "as the crow flies." Lake v. Butler, 24 L. J. N. S. Q. B. 273. R. v. Walden, 9 Q. B. 76.

565. If the person against whom any warrant has been issued cannot be found within the jurisdiction of the justice by whom the same was issued, but is or is suspected to be in any other part of Canada, any justice within whose jurisdiction he is or is suspected to be, upon proof being made on oath or affirmation of the handwriting of the justice who issued the same, shall make an endorsement

on the warrant, signed with his name, authorizing the execution thereof within his jurisdiction; and such endorsement shall be sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally directed, and also to all constables of the territorial division where the warrant has been so endorsed, to execute the same therein and to carry the person against whom the warrant issued, when apprehended, before the justice who issued the warrant, or before some other justice for the same territorial division. Such endorsement may be in the form H in schedule one hereto. R. S. C. c. 174, s. 49.

This section applies also to summary convictions. See Code, s. 844.

If the person against whom the warrant is issued cannot be found in the county in which it has been backed, it may be again backed in the same manner in any other county, and so from county to county until the offender is apprehended, and notwithstanding such backings of the warrant the offender may be afterwards apprehended therein in the county in which it originally issued.

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

566. If the prosecutor or any of the witnesses for the prosecution are in the territorial division where such person has been apprehended upon a warrant endorsed as provided in the last preceding section the constable or other person or persons who have apprehended him may, if so directed by the justice endorsing the warrant, take him before such justice, or before some other justice for the same territorial division; and the said justice may thereupon take the examination of such prosecutor or witnesses, and proceed in every respect as if he had himself issued the warrant. R. S. C. c. 174, s. 50.

567. When any person is arrested upon a warrant he shall, except in the case provided for in the next preceding section, be brought as soon as is practi-

cable before the justice who issued it or some other justice for the same territorial division, and such justice shall either proceed with the inquiry or postpone it to a future time, in which latter case he shall either commit the accused person to proper custody or admit him to bail or permit him to be at large on his own recognizance according to the provisions hereinafter contained.

568. Every coroner, upon any inquisition taken before him whereby any person is charged with manslaughter or murder, shall (if the person or persons, or either of them, affected by such verdict or finding be not already charged with the said offence before a magistrate or justice), by warrant under his hand, direct that such person be taken into custody and be conveyed, with all convenient speed, before a magistrate or justice; or such coroner may direct such person to enter into a recognizance before him, with or without a surety or sureties, to appear before a magistrate or justice. In either case, it shall be the duty of the coroner to transmit to such magistrate or justice the depositions taken before him in the matter. Upon any such person being brought or appearing before any such magistrate or justice, he shall proceed in all respects as though such person had been brought or had appeared before him upon a warrant or summons.

After the commencement of this Act no one shall be tried upon any coroner's inquisition, Code, s. 642

This section virtually gives an appeal from the coroner's jury to a single magistrate who consequently, though heretofore he had not even the right to bail any one charged by a verdict of the coroner's jury, will now have the right to set him free altogether. Taschereau's Crim. Code, 638.

The coroner cannot now commit any one for trial. He must send any one charged by his inquest before a magistrate. *Ib.* 732.

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

Where, in a coroner's inquisition, the depositions of witnesses, the finding of the jury, and the signatures of the coroner and jury were all written in pencil, the court described it as inexcusable carelessness on the part of one clothed with the important functions devolving upon a coroner, though the proceedings were not thereby made illegal. R. v. Winegarner, 17 O. R. 208.

The caption to an inquisition finding the prisoner guilty of murder, stated that the inquest was held at H. on the 11th and 15th days of January, in the 51st year of the reign of Her Majesty Queen Victoria, and the inquisition to be "an inquisition indented taken for our Sovereign Lady the Queen," etc., "on view of the body of an infant child of A. W. (one of the prisoners) then and there lying upon the oath of " (giving the names of the jurors) "good and lawful men of the county, and who being then and there duly sworn and charged to enquire for our said Lady the Queen when, where, how, and by what means the said female child came to her death, do upon their oaths say," etc. On application to quash, it was held that the statement of the time of holding the inquest was sufficient, that it sufficiently appeared that the presentment was under oath and that it need not be under seal, and that there was sufficient identification of the child murdered with that of the body of which the view was had. The fact that the constable to whom the coroner delivered the summonses for the jury was at the inquest sworn in as one of the jury and was sworn and gave evidence as a witness and that another juryman was also sworn as a witness did not invalidate the proceedings, though this practice is not advisable. R. v. Winegarner, 17 O. R. 208.

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

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

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

To burn a dead body instead of burying it is not a misdemeanor unless it is so done as to amount to a public nuisance. If an inquest ought to be held upon a dead body, it is a misdemeanor so to

dispose of the body as to prevent the coroner from holding an inquest. R. v. Price, 12 Q. B. D. 247.

See Code, s. 206, as to misconduct in respect to human remains.

569. Any justice who is satisfied by information upon oath in the form J in schedule one hereto, that there is reasonable ground for believing that there is in any building, receptacle, or place—

(*a*) anything upon or in respect of which any offence against this Act has been or is suspected to have been committed; or

(*b*) anything which there is reasonable ground to believe will afford evidence as to the commission of any such offence: or

(*c*) anything which there is reasonable ground to believe is intended to be used for the purpose of committing any offence against the person for which the offender may be arrested without warrant—

may at any time issue a warrant under his hand authorizing some constable or other person named therein to search such building, receptacle or place, for any such thing, and to seize and carry it before the justice issuing the warrant, or some other justice for the same territorial division to be by him dealt with according to law. R. S. C. c. 174, ss. 51 and 52.

2. Every search warrant shall be executed by day, unless the justice shall by the warrant authorize the constable or other person to execute it at night

3. Every search warrant may be in the form I in schedule one hereto, or to the like effect.

4. When any such thing is seized and brought before such justice he may detain it, taking reasonable care to preserve it till the conclusion of the investigation; and, if any one is committed for trial, he may order it further to be detained for the purpose of evidence on the trial. If no one is committed, the justice shall direct such thing to be restored to the person from whom it was taken, except in the cases next hereinafter mentioned, unless he is authorized or required by law to dispose of it otherwise. In case any improved arm or ammunition in respect to which any offence under section one hundred and sixteen has been committed has been seized, it shall be forfeited to the Crown. R. S. C. c. 50, s. 101.

5. If under any such warrant there is brought before any justice any forged bank-note, bank note-paper, instrument or other thing, the possession whereof in the absence of lawful excuse is an offence under any provision of this or any other Act, the court to which any such person is committed for trial or, if there is no commitment for trial, such justice may cause such thing to be defaced or destroyed. R. S. C. c. 174, s. 55.

6. If under any such warrant there is brought before any justice, any counterfeit coin or other thing the possession of which with knowledge of its nature and without lawful excuse is an indictable offence under any provision of Part XXXV. of this Act, every such thing as soon as it has been produced in evidence, or as

soon as it appears that it will not be required to be so produced, shall forthwith be defaced or otherwise disposed of as the justice or the court directs. R. S. C. c. 174, s. 56.

7. Every person acting in the execution of any such warrant may seize any explosive substance which he has good cause to suspect is intended to be used for any unlawful object,—and shall, with all convenient speed, after the seizure, remove the same to such proper place as he thinks fit, and detain the same until ordered by a judge of a superior court to restore it to the person who claims the same. R. S. C. c. 150, s. 11.

8. Any explosive substance so seized shall, in the event of the person in whose possession the same is found, or of the owner thereof, being convicted of any offence under Part VI. of this Act, be forfeited; and the same shall be destroyed or sold under the direction of the court before which such person is convicted, and, in the case of sale, the proceeds arising therefrom shall be paid to the Minister of Finance and Receiver General, for the public uses of Canada. R. S. C. c. 150, s. 12.

9. If offensive weapons believed to be dangerous to the public peace are seized under a search warrant the same shall be kept in safe custody in such place as the justice directs, unless the owner thereof proves, to the satisfaction of such justice, that such offensive weapons were not kept for any purpose dangerous to the public peace; and any person from whom any such offensive weapons are so taken may, if the justice of the peace upon whose warrant the same are taken, upon application made for that purpose, refuses to restore the same, apply to a judge of a superior or county court for the restitution of such offensive weapons, upon giving ten days' previous notice of such application to such justice; and such judge shall make such order for the restitution or safe custody of such offensive weapons as upon such application appears to him to be proper. R. S. C. c. 149, ss. 2 and 3.

10. If goods or things by means of which it is suspected that an offence has been committed under Part XXXIII. are seized under a search warrant, and brought before a justice, such justice and one or more other justice or justices shall determine summarily whether the same are or are not forfeited under the said Part XXXIII.; and if the owner of any goods or things which, if the owner thereof had been convicted, would be forfeited under this Act, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and the said justice may cause notice to be advertised stating that unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be declared forfeited; and at such time and place the justice, unless the owner, or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may declare such goods or things, or any of them, forfeited. 51 V. c. 41, s. 14.

570. Any constable or other peace officer, if deputed by any public department, may, within the limits for which he is such constable or peace officer, stop, detain and search any person reasonably suspected of having or conveying in any manner any public stores defined in section three hundred and eighty-three, stolen

or unlawfully obtained, or any vessel, boat or vehicle in or on which their is reason to suspect that any public stores stolen or unlawfully obtained may be found.

2. A constable or other peace officer shall be deemed to be deputed within the meaning of this section if he is deputed by any writing signed by the person who is the head of such department. or who is authorized to sign documents on behalf of such department.

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

2. The decision of the justice in such case is subject to appeal as in ordinary cases coming within the provisions of Part LVIII. R. S. C. c. 174, s. 53.

572. If any constable or other peace officer has reasonable cause to suspect that any timber, mast, spar, saw-log or other description of lumber, belonging to any lumberman or owner of lumber, and bearing the registered trade mark of such lumberman or owner of lumber, is kept or detained in any saw-mill, mill-yard, boom or raft, without the knowledge or consent of the owner, such constable or other peace officer may enter into or upon the same, and search or examine, for the purpose of ascertaining whether such timber, mast, spar, saw-log or other description of lumber is detained therein without such knowledge and consent. R. S. C. c. 174, s. 54.

573. Any officer in Her Majesty's service, any warrant or petty officer of he navy, or any non-commissioned officer of marines, with or without seamen or persons under his command, may search any boat or vessel which hovers about or approaches, or which has hovered about or approached, any of Her Majesty's ships or vessels mentioned in section one hundred and nineteen, Part VI. of this Act, and may seize any intoxicating liquor found on board such boat or vessel; and the liquor so found shall be forfeited to the Crown. 50-51 V. c. 46, s. 3.

574. Whenever there is reason to believe that any woman or girl mentioned in section one hundred and eighty-five, Part XIII., has been inveigled or enticed to a house of ill-fame or assignation, then upon complaint thereof being made under oath by the parent, husband, master or guardian of such woman or girl, or in the event of such woman or girl having no known parent, husband, master nor guardian in the place in which the offence is alleged to have been committed, by any other person, to any justice of the peace, or to a judge of any court authorized to issue warrants in cases of alleged offences against the criminal law, such justice of the peace or judge of the court may issue a warrant to enter, by day or night, such house of ill-fame or assignation, and if necessary use force for the purpose of effecting such entry

whether by breaking open doors or otherwise, and to search for such woman or girl, and bring her, and the person or persons in whose keeping and possession she is, before such justice of the peace or judge of the court, who may, on examination, order her to be delivered to her parent, husband, master or guardian, or to be discharged, as law and justice require. R. S. C. c. 157, s. 7.

Under this section it would seem that the justice has a judicial as well as a ministerial function, and that if the justice upon the *bona fide* information of an applicant, decides that there are reasonable grounds for suspicion, and issues a search warrant, no action for malicious prosecution will lie against such applicant for having given the information to the justice. See Hope v. Evered, 16 Cox, 112.

575. If the chief constable or deputy chief constable of any city or town, or other officer authorized to act in his absence, reports in writing to any of the commissioners of police or mayor of such city or town, or to the police magistrate of any town, that there are good grounds for believing, and that he does believe, that any house, room or place within the said city or town is kept or used as a common gaming or betting-house as defined in Part XIV., sections one hundred and ninety-six and one hundred and ninety-seven, or is used for the purpose of carrying on a lottery, or for the sale of lottery tickets, contrary to the provisions of Part XV., section two hundred and five, whether admission thereto is limited to those possessed of entrance keys or otherwise, the said commissioners or commissioner, or mayor, or the said police magistrate, may, by order in writing, authorize the chief constable, deputy chief constable, or other officer as aforesaid, to enter any such house, room or place, with such constables as are deemed requisite by the chief constable, deputy chief constable or other officer,—and, if necessary, to use force for the purpose of effecting such entry, whether by breaking open doors or otherwise,—and to take into custody all persons who are found therein, and to seize, as the case may be (1) all tables and instruments of gaming, and all moneys and securities for money, or (2) all instruments or devices for the carrying on of such lottery, and all lottery tickets found in such house or premises. R. S. C. c. 158, s. 2.

2. The chief constable, deputy chief constable or other officer making such entry, in obedience to any such order, may, with the assistance of one or more constables, search all parts of the house, room or place which he has so entered, where he suspects that tables or instruments of gaming or betting, or any instruments or devices for the carrying on of such lottery or any lottery tickets, are concealed, and all persons whom he finds in such house or premises, and seize all tables and instruments of gaming, or any such instruments or devices or lottery tickets as aforesaid, which he so finds. R. S. C. c. 158, s. 3.

3. The police magistrate or other justice of the peace before whom any person is taken by virtue of an order or warrant under this section, may direct any cards, dice, balls, counters, tables or other instruments of gaming, used in playing any

game, and seized under this Act in any place used as a common gaming-house, or any such instruments or devices for the carrying on of a lottery, or any such lottery tickets as aforesaid, to be forthwith destroyed, and any money or securities seized under this section shall be forfeited to the Crown for the public uses of Canada. R. S. C. c. 158, s. 5.

4. The expression "chief constable" includes chief of police, city marshal or other head of the police force of any city, town or place. R. S. C. c. 158, s. 1.

5. The expression "deputy chief constable" includes deputy chief of police, deputy or assistant city marshal or other deputy head of the police force of any city, town or place, and the expression "police magistrate" includes stipendiary magistrates.

Every order under this section should be executed within a reasonable time. In one case the order to enter was issued in January, 1889, but not executed till March, 1892. No provision being made by the Act as to the time within which the order should be executed, it was held that the case was governed by s. 841 of the Code. This order is distinct from a warrant for arrest of a person charged with a crime, which is valid until executed. R. v. Ah Sing, 2 B. C. R. (Hunter) 167.

576. Any stipendiary or police magistrate, mayor or warden, or any two justices of the peace, upon information before them made, that any person described in Part XV. as a loose, idle or disorderly person, or vagrant, is or is reasonably suspected to be harboured or concealed in any disorderly house, bawdy-house, house of ill-fame, tavern or boarding-house, may, by warrant, authorize any constable or other person to enter at any time such house or tavern, and to apprehend and bring before them or any other justices of the peace, every person found therein so suspected as aforesaid. R. S. C. c. 157, s. 8.

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

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

In the North-West Territories any Judge of the Supreme Court or justice of the peace, on complaint made before him on the evidence of one credible witness, that any intoxicating liquor is being manufactured, sold or bartered, may issue a search warrant as in cases of stolen goods. R. S. C. c. 50, s. 94; 54 & 55 V. c. 22, s. 15.

The same law applies in the District of Keewatin. R. S. C. c. 58, s. 37.

Under the Wrecks and Salvage Act (R. S. C. c. 81, s. 41), the receiver of any wreck may obtain a search warrant from any justice of the peace to search for concealed wreck. So a search warrant may be granted to search for fish where there is reason to believe that they are taken in violation of the Fisheries Act. R. S. C. c. 95, s. 17, s-s. 2.

It is not merely in reference to goods that such warrants may now be granted. Thus under the Seaman's Act (R. S. C. c. 74, s. 119), a justice of the peace may grant a warrant to search for seamen unlawfully harbored or detained, or for apprehending deserters supposed to be concealed in taverns or houses of ill-fame, *Ib.* s. 120. A similar provision is inserted in the Inland Waters Seaman's Act. R. S. C. c. 75, s. 42.

The party requiring a search warrant must go before a justice of the peace of the county or other jurisdiction where the premises intended to be searched are situate, and make oath of circumstances, showing a reasonable ground for suspecting that the goods are upon these premises. He must also show, upon oath, either that the goods were stolen or that he has reason to suspect that they have been stolen, for a positive oath that a felony was committed, of goods, is not necessary to justify a magistrate in granting a search warrant for them. Elsee v. Smith, 1 Dowl. & Ry. 97. The warrant may be issued on a Sunday. See s. 564, s-s. 3.

PART XLV.

PROCEDURE ON APPEARANCE OF ACCUSED.

577. When any person accused of an indictable offence is before a justice, whether voluntarily or upon summons, or after being apprehended with or without warrant, or while in custody for the same or any other offence, the justice shall proceed to inquire into the matters charged against such person in the manner hereinafter defined.

There is in this section a distinct recognition of the fact that the accused may waive the issue of a summons. See *ante*, p. 61.

578. No irregularity or defect in the substance or form of the summons or warrant, and no variance between the charge contained in the summons or warrant and the charge contained in the information, or between either and the evidence adduced on the part of the prosecution at the inquiry, shall affect the validity of any proceeding at or subsequent to the hearing. R. S. C. c. 174 s. 58.

See also ss. 629 and 723 of the Code.

579. If it appears to the justice that the person charged has been deceived or misled by any such variance in any summons or warrant, he may adjourn the hearing of the case to some future day, and in the meantime may remand such person, or admit him to bail as hereinafter mentioned. R. S. C. c. 174, s. 59.

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

same manner as an indictment under s. 629 of this Act; see also *Re* Conklin, 31 Q. B. (Ont.) 160.

Section 578 was framed not only to meet the case of a variance between the information and the evidence (see Whittle v. Frankland, 5 L. T. N. S. 639); but to cure defects in the information either in "substance or in form," where the evidence discloses an offence. But it does not enable the justice to summon a person for one offence requiring a particular punishment, and without a fresh information, convict him of a different offence requiring a different punishment. Martin v. Pridgeon, 1 E. & E. 778; R. v. Brickhall, 10 L. T. N. S. 385. The plaintiff was brought before defendant and another magistrate on the 2nd of January, 1875, under a summons issued by defendant, on an information that he did on, etc., "obtain, by false pretences, from complainant, the sum of five dollars contrary to law," omitting the words "with intent to defraud," which, by s. 359 of the Code, is made part of the offence. The plaintiff did not, when before the magistrate, pretend ignorance of the charge, or take any objection to the information, and it was held that the defendant had jurisdiction, for the information might, by intendment, be read, as charging the statutable offence, and if not, the plaintiff should have taken his objection before the magistrate, when the information might have been amended and resworn, and that he was precluded from raising it in this action. Crawford v. Beattie, 39 Q. B. (Ont.) 13.

580. If it appears to the justice that any person being or residing within the province is likely to give material evidence either for the prosecution or for the accused on such inquiry he may issue a summons under his hand requiring such person to appear before him at a time and place mentioned therein to give evidence respecting the charge, and to bring with him any documents in his possession or under his control relating thereto.

2. Such summons may be in the form K in schedule one hereto, or to the like effect. R. S. C. c. 174, s. 60.

This section, it will be observed, is limited to persons being or residing in the province, that is, the same province as the justice. When the witness is residing any where in Canada out of the province, s. 584 applies, and a writ of subpœna may be obtained from any judge of a superior court or a county court.

See also ss. 678, 679 and 680 of the Code. It would seem that s. 681 may be invoked in the case of a preliminary inquiry to furnish evidence in the case of a person dangerously ill. See also ss. 682 and 683.

The provisions of s. 580 cannot be invoked until an information is laid against the accused, and a summons or warrant is issued against him.

The summons to a witness should be addressed to him by his name and description. The day on which he is thereby ordered to appear should be stated as well as the place, giving such a designation or description thereof as that he can easily find it, if in a city, town, village or parish. It should also be dated, signed, and sealed by the justice. In the event of the person served with a summons neglecting or refusing to appear, the justice can issue a warrant for his apprehension. See Code, s. 582.

Formerly only witnesses for the prosecution could be summoned. Now any person likely to give material evidence either for the prosecution or for the accused, may be required to appear.

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

In the Province of Quebec it has been held that the Court of Queen's Bench has the right to order the issue of a writ of *habeas corpus* to bring a prisoner, detained for a debt on a *capias*, before a magistrate, to attend at the preliminary examination of the information laid against him for a criminal offence. *Ex parte* Tibbs, 3 D. R. 116. See Code, s. 680, under which the procedure would now be by order on the gaoler.

Only the justice before whom the information is laid has authority to issue a summons for a witness under this section. It gives no authority to a justice, who is a stranger to the proceedings instituted, to summon witnesses to appear before the justice who took the information. Byrne v. Arnold, 24 S. C. N. B. 161.

A justice cannot be ordered to attend at the house of an infirm witness to take his deposition. *Ex parte* Kimbolton, 25 J. P. 759.

Under the "Canada Evidence Act," 1893, 56 V. c. 31, s. 3, a person shall not be incompetent to give evidence by reason of in-

terest or crime, and the prisoner or the prisoner's husband or wife, as the case may be, is competent.

This section is silent as to the manner in which it is to be made to appear to the justice that any person is likely to give material evidence. The summons K recites that "it has been made to appear to me upon (*oath*)." Sections 582 and 583 of the Code make it clear that before the warrant is issued the justice must be satisfied by proof on oath that the witness is likely to give material evidence, and will not attend without being compelled so to do. The following form of deposition may be used:

DEPOSITION THAT A PERSON IS A MATERIAL WITNESS.

Canada
Province of
District (*or* County, United Counties, *or as the case may be*), of

The deposition of J. N., of the of C., in the said County (*farmer*), taken on oath before me the undersigned, one of Her Majesty's Justices of the Peace in and for the said County of C., at N., in the said County, this day of , 18 , who saith that E. F., of the of C., aforesaid (*grocer*), is likely to give material evidence on behalf of the prosecution, in this behalf, touching the matter of the annexed (*or* "within") information (*or* "complaint"; and that this deponent verily believes that the said E. F. will not appear for the purpose of being examined as a witness without being compelled so to do.

Before me, J. S.

It is difficult to understand why there should be a recital in the form of summons K, that it has been made to appear upon (*oath*) that the witness is likely to give material evidence when there is no provision in the section for such proof.

A. was summoned to appear as a witness for the prosecution on the trial of an information for a violation of the Canada Temper-

ance Act. He was served with the summons and paid the regular fees for travel and attendance, but disobeyed the summons and made no excuse. The magistrate, before whom the information was laid, issued four warrants in succession to have A. arrested and brought before him to testify, and adjourned the hearing of the cause from time to time for that purpose. A. evaded arrest under the first three warrants, but was arrested under the fourth. Having escaped, he was re-arrested by defendants, who gained access to a house in which he had taken refuge by raising a window, and, on refusing to give bail, A. was placed in gaol. The court held that the laying of the information gave the magistrate jurisdiction to go on with the inquiry and issue the warrant, even though the Canada Temperance Act might not be in force, and, the prosecution being a criminal proceeding, the defendants were justified in opening the window and entering the house, and in placing A. in gaol on his refusal to give bail. Messenger v. Parker, 6 Russell & Geldert, 237.

581. Every such summons shall be served by a constable or other peace officer upon the person to whom it is directed either personally, or if such person cannot conveniently be met with, by leaving it for him at his last or most usual place of abode with some inmate thereof apparently not under sixteen years of age.

This section is substantially the same as s. 562, s-s. 2 of the Code. See notes in the latter section, *ante* p. 57.

582. If any one to whom such last-mentioned summons is directed does not appear at the time and place appointed thereby, and no just excuse is offered for such non-appearance, then (after proof upon oath that such summons has been served as aforesaid, or that the person to whom the summons is directed is keeping out of the way to avoid service) the justice before whom such person ought to have appeared, being satisfied by proof on oath that he is likely to give material evidence, may issue a warrant under his hand to bring such person at a time and place to be therein mentioned before him or any other justice in order to testify as aforesaid.

2. The warrant may be in the form L in schedule one hereto, or to the like effect. Such warrant may be executed anywhere within the territorial jurisdiction of the justice by whom it is issued, or, if necessary, endorsed as provided in section five hundred and sixty-five and executed anywhere in the province, but out of such jurisdiction. R. S. C. c. 174, s. 61.

3. If a person summoned as a witness under the provisions of this part is brought before a justice on a warrant issued in consequence of refusal to obey the

summons such person may be detained on such warrant before the justice who issued the summons or before any other justice in and for the same territorial division who shall then be there, or in the common gaol, or any other place of confinement, or in the custody of the person having him in charge, with a view to secure his presence as a witness on the day fixed for the trial; or in the discretion of the justice such person may be released on recognizance, with or without sureties, conditioned for his appearance to give evidence as therein mentioned, and to answer for his default in not attending upon the said summons as for contempt; and the justice may, in a summary manner, examine into and dispose of the charge of contempt against such person, who, if found guilty thereof, may be fined or imprisoned, or both, such fine not to exceed twenty dollars, and such imprisonment to be in the common gaol, without hard labour, and not to exceed the term of one month, and may also be ordered to pay the costs incident to the service and execution of the said summons and warrant and of his detention in custody. 51 V. c. 45, s. 1.

(The conviction under this section may be in the form PP in schedule one hereto.)

See notes on s. 580, *ante*, p. 77.

These sections in no manner apply to the case of a prosecutor unwilling to proceed, and entitled so to refuse (as for instance where the charge is of assault only, see s. 864 of the Code), but only to the case of a material witness other than the prosecutor refusing to attend, where the prosecutor is desirous of proceeding. Cross v. Wilcox, 39 Q. B. (Ont.) 187. A magistrate who by warrant causes the arrest of the prosecutor to *answer the charge contained in the information*, and to be further dealt with according to law, exceeds his jurisdiction and is liable in trespass.

A magistrate has no right to issue a warrant for the apprehension of a person to attend to find bail for his appearance as a witness at the assizes, although it is sworn that the witness is material, and had refused to obey a summons which had previously been issued, to give evidence before the magistrate. Evans v. Rees, 12 A. & E. 55.

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

583. If the justice is satisfied by evidence upon oath that any person within the province, likely to give material evidence either for the prosecution or for the accused, will not attend to give evidence without being compelled so to do,

then instead of issuing a summons, he may issue a warrant in the first instance. Such warrant may be in the form M in schedule one hereto, or to the like effect, and may be executed anywhere within the jurisdiction of such justice, or, if necessary, endorsed as provided in section five hundred and sixty-five and executed anywhere in the province but out of such jurisdiction. R. S. C. c. 174, s. 62.

See notes to s. 580, *ante*, p. 77. Both the form of summons and warrant seem to assume that the witness is to give evidence for "*the prosecution*," whereas s. 580 as well as the above section extend to witnesses for the prosecution or for the accused. See also s. 584.

584. If there is reason to believe that any person residing anywhere in Canada out of the province and not being within the province, is likely to give material evidence either for the prosecution or for the accused, any judge of a Superior Court or a County Court, on application therefor by the informant or complainant, or the Attorney-General, or by the accused person or his solicitor or some person authorized by the accused, may cause a writ of subpœna to be issued under the seal of the court of which he is a judge, requiring such person to appear before the justice before whom the inquiry is being held or is intended to be held at a time and place mentioned therein to give evidence respecting the charge and to bring with him any documents in his possession or under h control relating thereto.

2. Such subpœna shall be served personally upon the person to whom it is directed and an affidavit of such service by a person effecting the same purporting to be made before a justice of the peace, shall be sufficient proof thereof.

3. If the person served with a subpœna as provided by this section, does not appear at the time and place specified therein, and no just excuse is offered for his non-appearance, the justice holding the inquiry, after proof upon oath that the subpœna has been served, may issue a warrant under his hand directed to any constable or peace officer of the district, county or place where such person is, or to all constables or peace officers in such district, county or place, directing them or any of them to arrest such person and bring him before the said justice or any other justice at a time and place mentioned in such warrant in order to testify as aforesaid.

4. The warrant may be in the form N in schedule one hereto or to the like effect. If necessary, it may be endorsed in the manner provided by section five hundred and sixty-five, and executed in a district, county or place other than the one therein mentioned.

When the witness is within the province the justice before whom the information is laid may compel his attendance. See s. 580 and notes thereon, *ante*, p. 77.

The provisions of this section cannot be invoked until an information is laid before a justice against the accused. See *ante*, p. 78.

585. Whenever any person appearing, either in obedience to a summons or subpœna, or by virtue of a warrant, or being present and being verbally required by the justice to give evidence, refuses to be sworn, or having been sworn, refuses to answer such questions as are put to him, or refuses or neglects to produce any documents which he is required to produce, or refuses to sign his depositions without in any such case offering any just excuse for such refusal, such justice may adjourn the proceedings for any period not exceeding eight clear days, and may in the meantime by warrant in form O in schedule one hereto, or to the like effect, commit the person so refusing to gaol, unless he sooner consents to do what is required of him. If such person, upon being brought up upon such adjourned hearing, again refuses to do what is so required of him, the justice, if he sees fit, may again adjourn the proceedings, and commit him for the like period, and so again from time to time until such person consents to do what is required of him.

2. Nothing in this section shall prevent such justice from sending any such case for trial, or otherwise disposing of the same in the meantime, according to any other sufficient evidence taken by him. R. S. C. c. 174, s. 63.

As to questions tending to criminate, see "The Canada Evidence Act," 1893, 56 V. c. 31, s. 5.

586. A justice holding the preliminary inquiry may, in his discretion—

(*a*) permit or refuse permission to the prosecutor, his counsel or attorney to address him in support of the charge, either by way of opening or summing up the case, or by way of reply upon any evidence which may be produced by the person accused;

(*b*) receive further evidence on the part of the prosecutor after hearing any evidence given on behalf of the accused;

(*c*) adjourn the hearing of the matter from time to time, and change the place of hearing, if from the absence of witnesses, the inability of a witness who is ill to attend at the place where the justice usually sits, or from any other reasonable cause, it appears desirable to do so, and may remand the accused if required by warrant in the form P in schedule one hereto: Provided that no such remand shall be for more than eight clear days, the day following that on which the remand is made being counted as the first day, and further provided, that if the remand is for a time not exceeding three clear days, the justice may verbally order the constable or other person in whose custody the accused then is, or any other constable or person named by the justice in that behalf, to keep the accused person in his custody and to bring him before the same or such other justice as shall be there acting at the time appointed for continuing the examination. R. S. C. c. 174, s. 65;

(*d*) order that no person other than the prosecutor and accused, their counsel and solicitor shall have access to, or remain in the room or building in which the inquiry is held (which shall not be an open court), if it appears to him that the ends of justice will be best answered by so doing;

(*e*) regulate the course of the inquiry in any way which may appear to him desirable, and which is not inconsistent with the provisions of this Act.

If the accused is not allowed a full opportunity of cross-examining a witness his deposition will not be admissible on the trial, in the case of his subsequent illness, inability to travel or absence from Canada. See s. 687, see *post*, title evidence. See also s. 590, which requires that the evidence of the witnesses shall be given in the presence of the accused and that he shall be entitled to cross-examine them. This section, it will be observed, enables the justice to refuse permission to the prosecutor to address him in support of the charge, but says nothing as to the accused.

Where justices are exercising a *judicial* authority, as in hearing and determining a case on summary conviction, their proceedings ought not to be private, and they are not therefore warranted in removing a person from the place where they are exercising such authority unless he interrupts their proceedings. Daubney v. Cooper, 10 B. & C. 237. See s. 849 of the Code. But where a magistrate is acting merely in a *ministerial* capacity, as enquiring into a charge of an indictable offence previous to a committal of the party for trial, the magistrate has a discretion as to who shall or shall not be present at the examination, for it may be essential to the ends of public justice, and more especially to prevent any accomplices from escaping that the examination should be private and not interrupted by the interference of any person on the part of the prisoner. Cox v. Coleridge, 1 B. & C. 37.

And under this section the justice may, in his discretion, order that no person shall have access to the room or building in which the examination is being taken, or shall be or remain in it without his consent or permission, if it appear to him that the ends of justice will be best answered by doing so. The justices may exclude an attorney or counsel if they please. R. v. Coleridge, 1 B. & C. 37; Collier v. Hicks, 2 B. & Ad. 663; see also *Re* Judge, C. C. York, 31 Q. B. (Ont.) 267; but in no circumstances the accused or his counsel. R. v. Commins, 4 D. & R. 94; R. v. Griffiths, 16 Cox, 46. And it would seem clear under this section that the prosecutor and the accused with their respective counsel have a right to be present. See also s. 590.

Under s. 550 of the Code the trials of all persons apparently under the age of sixteen years shall, so far as it appears expedient and

practicable, take place without publicity and separately and apart from that of other accused persons, and at suitable times to be designated and appointed for that purpose.

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

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

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

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

587. If the accused is remanded under the next preceding section the justice may discharge him, upon his entering into a recognizance in the form Q in schedule one hereto, with or without sureties in the discretion of the justice, conditioned for his appearance at the time and place appointed for the continuance of the examination. R. S. C. c. 174, s. 67.

See sections 589 and 805 of the Code as to the proceedings to be adopted on the non-appearance of the accused under the recognizance.

Formerly notice of the recognizance had to be given to the accused and his sureties. See R. S. C. c. 174, s. 67; R. v.

McKay, 28 S. C. N. B. 564. This notice is not now required except under section 779 of the Code.

This section says nothing as to the method of executing the recognizance, but it would be well to follow the provisions of section 598 in this respect.

588. The justice may order the accused person to be brought before him, or before any other justice for the same territorial division, at any time before the expiration of the time for which such person has been remanded, and the gaoler or officer in whose custody he then is shall duly obey such order. R. S. C. c. 174, s. 66.

589. If the accused person does not afterwards appear at the time and place mentioned in the recognizance the said justice, or any other justice who is then and there present, having certified upon the back of the recognizance the non-appearance of such accused person in the form R in schedule one hereto, may transmit the recognizance to the clerk of the court where the accused person is to be tried, or other proper officer appointed by law, to be proceeded upon in like manner as other recognizances; and such certificate shall be *primâ facie* evidence of the non-appearance of the accused person. R. S. C. c. 174, s. 68.

See also section 805.

590. When the accused is before a justice holding an inquiry, such justice shall take the evidence of the witnesses called on the part of the prosecution.

2. The evidence of the said witnesses shall be given upon oath and in the presence of the accused; and the accused, his counsel or solicitor, shall be entitled to cross-examine them.

3. The evidence of each witness shall be taken down in writing in the form of a deposition, which may be in the form S in schedule one hereto, or to the like effect.

4. Such deposition shall, at some time before the accused is called on for his defence, be read over to and signed by the witness and the justice, the accused, the witness and justice being all present together at the time of such reading and signing.

5. The signature of the justice may either be at the end of the deposition of each witness, or at the end of several or of all the depositions in such a form as to show that the signature is meant to authenticate each separate deposition.

6. Every justice holding a preliminary inquiry is hereby required to cause the depositions to be written in a legible hand and on one side only of each sheet of paper on which they are written. R. S. C. c. 174, s. 69.

7. Provided that the evidence upon such inquiry or any part of the same may be taken in shorthand by a stenographer who may be appointed by the justice and who before acting shall make oath that he shall truly and faithfully report the evidence; and where evidence is so taken, it shall not be necessary that such evi-

dence be read over to or signed by the witness, but it shall be sufficient if the transcript be signed by the justice and be accompanied by an affidavit of the stenographer that it is a true report of the evidence.

The provisions of sub-sections 4, 5, 6 and 7 of this section are substantially new.

According to the most recent authority in England, prisoners at the preliminary inquiry into an indictable offence have a right to be represented by counsel or solicitor, and such counsel or solicitor has an absolute right to cross-examine the witnesses for the prosecution. It would be most unfortunate if magistrates possessed a discretion to prohibit cross-examination, since the exercise of that discretion would prevent the depositions of a witness from being used at the trial under any circumstances, and would tend to impair that appearance of perfect fairness which is the first essential of proceedings in a criminal court. R. v. Griffiths, 16 Cox, 46. See R. v. Shurmer, 16 Cox, 94; R. v. Peacock, 12 Cox, 91; R. v. Milloy, 6 L. N. 95; Code, s. 687.

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

The evidence should be taken down as nearly as possible in the witness' own words, and the depositions should contain the full evidence, cross-examination as well as examination-in-chief. Any interruption by the accused should be taken down, and may be evidence against him. R. v. Stripp, Dears. 648.

At the close of the witness' examination, it would be well for the justice to put any questions—answers to which would in his opinion tend to throw light on the facts and circumstances of the case. The accused person should then be asked by the justice if he has any questions in cross-examination to put to the witness; if he declares that he does not wish to cross-examine, that fact should be noted in the deposition, but if he declares that he desires to cross-examine, his questions, when pertinent to the matter in issue, must be answered by the witness, and must be reduced to writing by the justice together with the answers of the witness thereto. Care must be taken to distinguish between the examination and cross-examination of the witness; if necessary, the witness can be re-examined, the deposition must then be read over to

and signed by the witness and by the justice taking the same, all in the presence of the accused. R. v. Watts, 9 L. T. N. S. 453; Kerr's Acts, 78-9.

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

Under this section, where there are several witnesses, it is not necessary that each deposition should be signed by the justice if the form S in the schedule applicable to the case is carefully followed. See R. v. Parker, L. R. 1 C. C. R. 225.

The depositions of witnesses called for the accused are taken in the same manner as the depositions of the witnesses for the prosecution. Code, s. 593.

Although the prisoner be cautioned, as provided by the 591st section, before he makes his statement, yet if his statement amount to a confession, and he was induced to make it by any previous promise of favour or threat, it cannot be read in evidence against him; unless, indeed, before he made the statement he had been undeceived as to the threat or promise, and told that he had nothing to fear from the one or hope from the other. This section of the statute was intended to remove this difficulty, and compliance with its provisions is only necessary in cases where such a threat or promise has been holden out; and in order to undeceive the prisoner in respect to it, and make his confession evidence against him notwithstanding. In all other cases it is sufficient to give the caution required by this section, after which any confession not induced by threat or promise may be given in evidence against the prisoner. R. v. Sansone, 1 Den. C. C. 545; R. v. Bond, *Ib.* 517.

A defendant, arrested on a warrant, was brought before a justice who examined him, but took no evidence either of the prosecutor or witnesses, and committed defendant to gaol, saying he

could not bail. The defendant did not ask to have any hearing or investigation, or produce or offer to produce any evidence, or to give bail. It was held that the commitment, without the appearance of the prosecutor, or examination of any witnesses, or of the defendant, according to this section, or any legal confession, was an act wholly in excess of the jurisdiction of the magistrate and illegal. Connors v. Darling, 23 Q. B. (Ont.) 541.

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

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

The committal of a prisoner for trial being a judicial decision, evidence must be given before the committing magistrate of a *prima facie* case against the accused. Where therefore an inquiry is commenced by one magistrate and completed by another in the same jurisdiction, the second magistrate cannot commit upon evidence given before the first. The witnesses who gave their evidence before the first magistrate should be re-sworn and give their evidence *de novo* before the second magistrate. *Re* Guerin, 16 Cox, 596.

It is not probable that the evidence taken before the prior magistrate could be admitted by consent, as section 690 of the Code seems to apply to a *trial* and not a preliminary inquiry.

591. After the examination of the witnesses produced on the part of the prosecution has been completed, and after the depositions have been signed as aforesaid, the justice unless he discharges the accused person, shall ask him whether he wishes the depositions to be read again, and unless the accused dispenses therewith shall read or cause them to be read again. When the depositions have been again read, or the reading dispensed with, the accused shall be addressed by the justice in these words, or to the like effect:

"Having heard the evidence, do you wish to say anything in answer to the charge? You are not bound to say anything, but whatever you do say will be taken down in writing and may be given in evidence against you at your trial. You must clearly understand that you have nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to you to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you upon your trial notwithstanding such promise or threat."

2. Whatever the accused then says in answer thereto shall be taken down in writing in the form T in schedule one hereto, or to the like effect, and shall be signed by the justice and kept with the depositions of the witnesses and dealt with as hereinafter mentioned. R. S. C. c. 174, ss. 70 and 71.

The statement made by the accused person before the justice may, if necessary, upon the trial of such person, be given in evidence against him without further proof thereof, unless it is proved that the justice purporting to have signed the same did not in fact sign the same. R. S. C. c. 174, s. 223. Code, s. 689.

In view of the provisions of the 56 V. c. 31, admitting the evidence of the accused himself, the taking of the foregoing statement T might be abolished where the accused elects to be sworn. As the law now stands it is necessary to take the statement of the accused, after which he may give evidence in the ordinary way as a witness.

The provisions of this section as to warning the accused in regard to the effect of his statement are directory only, and a statement made by a prisoner as provided for by the Act, may be used in evidence against him, although the justice has not complied with the provisions of the section, if it appears that the prisoner was not induced to make the statement by any promise or threat. R. v. Soucie, 1 P. & B. 611.

The effect of this section, is to enable the prosecutor to give in evidence upon the trial any confession of the prisoner made after it, notwithstanding any promise or threat previously made.

Neglect to comply with the Act does not prevent the prosecutor from giving in evidence a confession made before the justice in the prisoner's statement above mentioned, after the usual cautions, R. v. Sansome, 19 L. J. M. C. 143, or a confession made at any other time which was not induced by any promise or threat.

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

The practice of questioning prisoners by policemen and thus extracting confessions from them, though it does not render the evidence so obtained inadmissible, is one that the judges strongly reprobate and which ought not to be permitted. R. v. Mick, 3 F. & F. 822. And it is not the duty of constables to interrogate prisoners in their custody even though they have first cautioned them not to criminate themselves. R. v. Hassett, 8 Cox, 511.

When a prisoner is willing to make a statement it is the magistrate's duty to receive it, but he ought before doing so entirely to get rid of any impression that may have been on the prisoner's mind that the statement may be used for his own benefit, and he ought also to be told that what he thinks fit to say will be taken down, and may be used against him on the trial. The mode of doing this is prescribed in terms by the section of the statute now under consideration. The caution contained in s. 591 is not necessary, unless it appears that some inducement or threat had previously been held out to the accused. R. v. Sansome, 1 Den. 545.

The 982nd section of the Code declares that the several forms given in the schedule varied to suit the case or forms to the like effect shall be deemed good, valid, and sufficient in law. See also R. S. C. c. 1, s. 7 (44). The form T of the statement of the accused before the magistrate contains the cautions specified in s. 591. Therefore a statement returned, purporting to be signed by the magistrate and bearing on the face of it the caution provided for by this section, is admissible by s. 689, without further proof. R. v. Bond, 1 Den. 517.

The object of taking depositions under the statute is not to afford information to the prisoner, but to preserve the evidence, if any of the witnesses are unable to attend the trial, or die. This being the ground on which they are taken, until recently the prisoner had no right to see them. R. v. Hamilton, 16 C. P. (Ont.) 364. Now he is entitled to copies of the depositions. Code, s. 597.

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

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

592. Nothing herein contained shall prevent any prosecutor from giving in evidence any admission or confession, or other statement, made at any time by the person accused or charged, which by law would be admissible as evidence against him. R. S. C. c. 174, s. 72.

593. After the proceedings required by section five hundred and ninety-one are completed the accused shall be asked if he wishes to call any witnesses.

2. Every witness called by the accused who testifies to any fact relevant to the case shall be heard, and his deposition shall be taken in the same manner as the depositions of the witnesses for the prosecution.

This section is new. As to the manner of taking the depositions, see Code, s. 590 and notes thereon.

594. When all the witnesses on the part of the prosecution and the accused have been heard the justice shall, if upon the whole of the evidence he is of opinion that no sufficient case is made out to put the accused upon his trial, discharge him; and in such case any recognizances taken in respect of the charge shall become void, unless some person is bound over to prosecute under the provisions next hereinafter contained. R. S. C. c. 174, s. 73.

The justice must under this section consider the whole evidence. But it need not be strong enough to convict but only "sufficient to put the accused on his trial." See Code, s. 596.

Justices ought not to balance the evidence and decide according as it preponderates, for this would, in fact, be taking upon themselves the functions of the petty jury and be trying the case. They should consider whether or not the evidence makes out a

probable, case of guilt. If, however, from the slender nature of the evidence, the unworthiness of the witnesses, or the conclusive, proof of innocence produced on the part of the accused, they feel that the case is not sustained, and that if they send it for trial he must be acquitted, they should discharge the accused. Kerr's Acts, 100, 1.

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

The discharge referred to in this section is made verbally no writing of any kind being required. A dismissal by a magistrate is not tantamount to an acquittal upon an indictment. It merely amounts to this that the justices do not think it advisable to proceed with the charge, but it is still open to them to hear a fresh charge against the prisoner. R. v. Waters, 12 Cox, 390.

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

The law is different in summary cases. See Code, s. 286.

595. If the justice discharges the accused, and the person preferring the charge desires to prefer an indictment respecting the said charge, he may require the justice to bind him over to prefer and prosecute such an indictment and thereupon the justice shall take his recognizance to prefer and prosecute an indictment against the accused before the court by which such accused would be tried if such justice had committed him, and the justice shall deal with the recognizance, information and depositions in the same way as if he had committed the accused for trial.

2. Such recognizance may be in the form U in schedule one hereto, or to the like effect.

3. If the prosecutor so bound over at his own request does not prefer and prosecute such an indictment, or if the grand jury do not find a true bill, or if the

accused is not convicted upon the indictment so preferred, the prosecutor shall, if the court so direct, pay to the accused person his costs, including the costs of his appearance on the preliminary inquiry.

4. The court before which the indictment is to be tried or a judge thereof may in its or his discretion order that the prosecutor shall not be permitted to prefer any such indictment until he has given security for such costs to the satisfaction of such court or judge. R. S. C. c. 174, s. 80.

As to transmitting the recognizance, see Code, s. 600. Under s. 641 of the Code any one bound over to prosecute any person whether committed for trial or not, may prefer a bill of indictment for the charge in respect of which the accused is bound over, or for any charge founded upon the facts or evidence disclosed in the deposition taken before the justice. This right to prefer an indictment is not limited to certain offences as in the case of the R. S. C. c. 174, s. 80, which applied only to perjury, subornation of perjury, conspiracy, obtaining money or other property by false pretences, forcible entry or detainer, nuisance, keeping a gambling house, keeping a disorderly house or any indecent assault. Under the former statute the recognizance was to be taken if the justice "refused to commit or to bail the person" charged with any of the above offences. The words used in s. 595 are "if the justice discharges the accused."

Under the former law where the justice dismissed the charge for want of evidence, such dismissal was equivalent to a refusal to commit, and the prosecutor was entitled to require the justice to take his recognizance to prosecute the charge or complaint by way of indictment. *Ex parte* Gostling, 16 Cox, 77.

The provisions in this 595th section as to payment of costs by the prosecutor are also new.

The marginal reference in the Code to this 595th section is "copy of depositions" to which it does not in any way relate.

596. If a justice holding a preliminary inquiry thinks that the evidence is sufficient to put the accused on his trial, he shall commit him for trial by a warrant of commitment, which may be in the form V in schedule one hereto, or to the like effect. R. S. C. c. 174, s. 73.

One justice may sign a warrant of commitment for felony under this section, and such warrant may be partly written and partly printed; for under the "Interpretat[illegible] Act," R. S. C.

c. 1, s. 7 (23), the expression "writing" "written" or any term of like import includes words printed, painted, engraved, lithographed or otherwise traced or copied. R. v. Holden, 1 M. L. R. 579.

Prisoner had been committed for larceny under a warrant which disclosed no offence. Subsequently to the service on the gaoler of a writ of *habeas corpus*, he received another warrant of commitment which was regular, and the court held that the second warrant of commitment was valid and sufficient to detain the prisoner in custody. R. v. House, 2 M. L. R. 58.

When any one against whom an indictment has been duly preferred and has been found, and who is then at large, does not appear to plead to such indictment, whether he is under recognizances to appear or not—

(*a*) The court before which the accused ought to have been tried may issue a warrant for his apprehension, which may be executed in any part of Canada:

(*b*) The officer of the court at which the said indictment is found or (if the place of trial has been changed) the officer of the court before which the trial is to take place, shall at any time after the time at which the accused ought to have appeared and pleaded, grant to the prosecutor, upon application made on his behalf and upon payment of twenty cents, a certificate of such indictment having been found. The certificate may be in the form GG in schedule one hereto, or to the like effect. Upon production of such certificate to any justice for the county or place in which the indictment was found, or in which the accused is or resides or is suspected to be or reside, such justice shall issue his warrant to apprehend him, and to cause him to be brought before such justice, or before any other justice for the same county or place, to be dealt with according to law. The warrant may be in the form HH in schedule one hereto, or to the like effect.

2. If it is proved upon oath before such justice that any one apprehended and brought before him on such warrant is the person charged and named in such indictment, such justice shall, without further inquiry or examination, either commit him to prison by a warrant which may be in the form II in schedule one hereto, or to

the like effect, or admit him to bail as in other cases provided; but if it appears that the accused has without reasonable excuse broken his recognizance to appear he shall not in any case be bailable as of right.

3. If it is proved before the justice upon oath that any such accused person is at the time of such application and production of the said certificate as aforesaid confined in any prison for any other offence than that charged in the said indictment, such justice shall issue his warrant directed to the warden or gaoler of the prison in which such person is then confined as aforesaid, commanding him to detain him in his custody until by lawful authority he is removed therefrom. Such warrant may be in the form JJ in schedule one hereto, or to the like effect. R. S. C. c. 174, ss. 33, 34 and 35. Code, s. 648.

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

The finding of an indictment in the cases mentioned in this section gives the justice jurisdiction to issue his warrant to apprehend the person against whom such indictment is found upon the certificate being produced to him.

Then section 641 of the Code, as we have seen, enables any one bound over to prosecute any person, whether committed for trial or not, to prefer a bill of indictment for the charge in respect of which the prosecutor is so bound over. But without being bound over, and without the direction of the Attorney-General, or the written consent of a judge of any court of criminal jurisdiction, there is no right to go before the grand jury.

597. Every one who has been committed for trial whether he is bailed or not, may be entitled at any time before the trial to have copies of the depositions, and of his own statement, if any, from the officer who has custody thereof, on payment of a reasonable sum not exceeding five cents for each folio of one hundred words. R. S. C. c. 174, s. 74.

Under section 653 of the Code every accused person shall be entitled at the time of his trial to inspect, without fee or reward, all depositions, or copies thereof, taken against him and returned into the court before which such trial is had, and to have the indictment on which he is to be tried read over to him if he so requires. R. S C. c. 174, s. 180.

And under section 655, every person indicted shall be entitled to a copy of the depositions returned into court on payment of five cents per folio of one hundred words for the same, provided, if the same are not demanded before the opening of the assizes, term, sittings or sessions, the court is of opinion that the same can be made without delay to the trial, but not otherwise; but the court may, if it sees fit, postpone the trial on account of such copy of the depositions not having been previously had by the person charged. R. S. C. c. 174, s. 182.

598. When any one is committed for trial the justice holding the preliminary inquiry may bind over to prosecute some person willing to be so bound, and bind over every witness whose deposition has been taken and whose evidence in his opinion is material, to give evidence at the court before which the accused is to be indicted.

2. Every recognizance so entered into shall specify the name and surname of the person entering into it, his occupation or profession, if any, the place of his residence and the name and number if any of any street in which it may be, and whether he is owner or tenant thereof or a lodger therein.

3. Such recognizance may be either at the foot of the deposition or separate therefrom, and may be in the form W, X or Y in schedule one hereto, or to the like effect, and shall be acknowledged by the person entering into the same, and be subscribed by the justice or one of the justices before whom it is acknowledged.

4. Every such recognizance shall bind the person entering into it to prosecute or give evidence (both or either as the case may be), before the court by which the accused shall be tried.

5. All such recognizances, and all other recognizances taken under this Act shall be liable to be estreated in the same manner as any forfeited recognizance to appear is by law liable to be estreated by the court before which the principal party thereto was bound to appear. R. S. C. c. 174, ss. 75 and 76.

6. Whenever any person is bound by recognizance to give evidence before a justice of the peace, or any criminal court, in respect of any offence under this Act, any justice of the peace, if he sees fit, upon information being made in writing and on oath, that such person is about to abscond, or has absconded, may issue his warrant for the arrest of such person; and if such person is arrested, any justice of the peace, upon being satisfied that the ends of justice would otherwise be defeated, may commit such person to prison until the time at which he is bound by such recognizance to give evidence, unless in the meantime he produces sufficient sureties; but any person so arrested shall be entitled on demand to receive a copy of the information upon which the warrant for his arrest was issued. 48-49 V. c. 7, s. 9.

This recognizance holds good if the accused elects to be tried under that part of the Code relating to the speedy trial of indictable offences. See Code, s. 779.

The former statute required that a notice of the recognizance, signed by the justice, should be given to the person bound thereby. Notice is not now necessary unless the person committed for trial elects to be tried under that part of the Code relating to the speedy trial of indictable offences. See Code, s. 779.

As the right to prefer an indictment (unless of course with the consent of the Attorney-General or of a judge,) depends upon the prosecutor being bound over, it is important that the provisions of this section be observed. See, also, ss. 595-641.

As to recognizances in general, see sections 910 to 926 of the Code.

As to estreat of same, see *Re* Talbot's Bail, 23 O. R. 65.

It is immaterial under this section where the offence was committed, or where the accused is to be tried. The recognizance must be taken and transmitted under the 600th section in all cases.

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

And in all cases where a justice of the peace is authorized or required to bind a person or make him give security to do any thing, he may do so by recognizance, and it is the ordinary and

proper form of doing it. Thus binding a man over to prosecute or a witness to give evidence, is by recognizance. Sureties to keep the peace or be of good behaviour, are by recognizance. See Code, s. 958; 56 V. c. 32.

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

The recognizance is taken by stating to the party the substance of it, but in the second person, "You A. B. acknowledge yourself to owe to our Sovereign Lady the Queen," etc.

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

The practical mode of taking the recognizance is as follows: The justice, or his clerk in the justice's presence, states to the party bound (and to his sureties if their are any), the substance of the recognizance. The parties bound assent to, but do not sign the recognizance, the justice alone appending his signature thereto. Care must be taken to suit the recognizance to the situation of the party bound, according to the variations of the form. Kerr's Acts, 87. See as to returning depositions, Burgoyne v. Moffatt, 5 Allen, 13. A coroner is required to take a recognizance in cases of examinations before him. See s. 568.

599. Any witness who refuses to enter into or acknowledge any such recognizance as aforesaid may be committed by the justice holding the inquiry by a warrant in the form Z in schedule one hereto, or to the like effect, to the prison for the place where the trial is to be had, there to be kept until after the trial, or until the witness enters into such a recognizance as aforesaid before a justice of the peace having jurisdiction in the place where the prison is situated: Provided that if the accused is afterwards discharged, any justice having such jurisdiction may order any such witness to be discharged by an order which may be in the form AA in the said schedule, or to the like effect. R. S. C. c. 174, ss. 78 and 79.

600. The following documents shall, as soon as may be after the committal of the accused, be transmitted to the clerk or other proper officer of the court by which the accused is to be tried, that is to say, the information if any, the depositions of the witnesses, the exhibits thereto, the statement of the accused, and all recognizances entered into, and also any depositions taken before a coroner if any such have been sent to the justice.

2. When any order changing the place of trial is made the person obtaining it shall serve it, or an office copy of it, upon the person then in possession of the said documents, who shall thereupon transmit them and the indictment, if found, to the officer of the court before which the trial is to take place. R. S. C. c. 174, s. 77.

The 54 & 55 V. c. 22, s. 12, respecting the North-west Territories, provides that every justice of the peace or other magistrate holding a preliminary investigation into any criminal offence which may not be tried under the provisions of "the Summary Convictions Act" shall immediately after the conclusion of such investigation transmit to the clerk of the court for the judicial district, in which the charge was made, all informations, examinations, depositions, recognizances, inquisitions and papers connected with such charge and the clerk of the court shall notify the judge thereof.

601. When any person appears before any justice charged with an indictable offence punishable by imprisonment for more than five years other than treason or an offence punishable with death, or an offence under Part IV. of this Act, and the evidence adduced is, in the opinion of such justice, sufficient to put the accused on his trial, but does not furnish such a strong presumption of guilt as to warrant his committal for trial, the justice, jointly with some other justice, may admit the accused to bail upon his procuring and producing such surety or sureties as, in the opinion of the two justices, will be sufficient to ensure his appearance at the time and place when and where he ought to be tried for the offence; and thereupon the two justices shall take the recognizances of the accused and his sureties, conditioned for his appearance at the time and place of trial, and that he will then surrender and take his trial and not depart the court without leave; and in any case in which the offence committed or suspected to have been committed is an offence punishable by imprisonment for a term less than five years any one justice before whom the accused appears may admit to bail in manner aforesaid, and such justice or justices may, in his or their discretion, require such bail to justify upon oath as to their sufficiency, which oath the said justice or justices may administer; and in default of such person procuring sufficient bail, such justice or justices may commit him to prison, there to be kept until delivered according to law.

2. The recognizance mentioned in this section shall be in the form BB in schedule one to this Act. R. S. C. c. 174, s. 81.

The distinction between felony and misdemeanour being abolished, see Code, s. 535, for the purposes of bail, indictable offences, punishable with imprisonment for more than five years, may be dealt with by two justices as felony formerly was, and those

punishable with imprisonment for less than five years are within the jurisdiction of one justice, as in the case of misdemeanour.

The word "shall" is imperative and the word "may" permissive. R. S. C. c. 1, s. 7 (4).

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

The Con. Stats. L. C. c. 95, excepts persons committed for treason or felony, as well as persons convicted or in execution by legal process, who are not entitled to bail in term or vacation. *Ex parte* Blossom, 10 L. C. J. 31-43.

The court may order bail in a case of perjury. R. v. Johnson, 8 L. C. J. 285.

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

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

The word "may" in this section must be considered as conferring a power, and not as giving a discretion. *Ex parte* Blossom, 10 L. C. J. 67.

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

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

When the charge against the prisoner is that he procured a person to set fire to his house, with intent to defraud an insurance company, and it is shown that the prisoner attempted to bribe the constable to allow him to escape, the probability of his appearing to stand his trial is too slight for the judge to order bail. R. v. Brynes, *supra*. The principle upon which a party committed to take his trial for an offence may be bailed, is founded chiefly upon the legal probability of his appearing to take his trial. Such probability does not exist in contemplation of law when a crime is of the highest magnitude, the evidence in support of the charge strong, and the punishment the severest known to the law. *Ex parte* Maguire, 7 L. C. R. 59; *ex parte* Huot, 8 Q. L. R. 28.

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

It is an indictable offence for justices or judges to exact excessive bail; and the party may also bring an action or apply for a criminal information.

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

A justice of the peace might perhaps in a matter in which he could properly act, and in which he was bound to admit a person

charged with an offence to bail, be prosecuted for maliciously refusing to take bail. McKinley v. Munsie, 15 C. P. (Ont.) 236.

Where plaintiff was arrested and imprisoned by a magistrate on an information laid by defendant himself, a magistrate who was present when the magistrate refused to grant bail, it was held in the absence of any evidence, that the defendant had directed the officer to take the plaintiff to prison, or had influenced the other magistrate in sending him there, or that the officer was present when the defendant and the other magistrate declined to take bail, and said they would send plaintiff to prison, or that he even knew that defendant had said anything about it, that the mere refusal of the defendant to admit the plaintiff to bail was not evidence to go to the jury, that the defendant authorized the illegal arrest and imprisonment of the plaintiff. *Ib.* 230.

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

By the terms of the 587th section it is entirely in the justice's discretion, in every case, whether he will allow the accused to go on bail during an adjournment of the hearing. It is otherwise when the justice has completed the examination and committed for trial. As a general rule it may be said that in practice it is not usual on a remand (especially where the precise nature or extent of the charge is undeveloped), for magistrates to admit to bail in those cases in which an accused is not entitled to be bailed after committal, unless the amount of property involved is very small. Kerr's Acts, 90.

Under the 541st section of the Act, certain functionaries, such as any police magistrate, district magistrate or stipendiary magistrate, have the power of two justices of the peace, and may admit to bail.

The amount of the bail is fixed by the justice, the character of the charge and evidence, position of the accused being considered. Sureties are usually householders, but it is in the discretion of the justice to accept whom he will; he may examine proposed sureties

on oath, but the examination should tend to the sufficiency of the surety, and not to character. R. v. Badger, 4 Q. B. 468.

The qualification of property rather than of character is the main consideration. R. v. Saunders, 2 Cox, 249. The justices may if they think fit, require twenty-four or forty-eight hours notice of the bail proposed to be given to the other side.

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

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

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

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

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

As to bail in these cases, see Code, ss. 602, 603.

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

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

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

In directing a new trial the Court of Appeal may admit the accused to bail. See Code, s. 749, s-s. 2.

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

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

602. In case of any offence other than treason or an offence punishable with death, or an offence under Part IV. of this Act, where the accused has been finally committed as herein provided, any judge of any superior or county court,

having jurisdiction in the district or county within the limits of which the accused is confined, may, in his discretion, on application made to him for that purpose, order the accused to be admitted to bail on entering into recognizance with sufficient sureties before two justices, in such amount as the judge directs, and thereupon the justices shall issue a warrant of deliverance as hereinafter provided, and shall attach thereto the order of the judge directing the admitting of the accused to bail.

2. Such warrant of deliverance shall be in the form CC in schedule one to this Act. R. S. C. c. 174, s. 82.

No time during which the accused is out on bail shall be reckoned as part of the term of imprisonment to which he is sentenced. See Code, s. 955, s-s. 7.

603. No judge of a county court or justices shall admit any person to bail accused of treason or an offence punishable with death, or an offence under Part IV. of this Act, nor shall any such person be admitted to bail, except by order of a superior court of criminal jurisdiction for the province in which the accused stands committed, or of one of the judges thereof, or, in the province of Quebec, by order of a judge of the Court of Queen's Bench or Superior Court. R. S. C. c. 174, s. 83.

A judge of the High Court has power under this section to admit to bail where the accused has not been finally committed for trial in cases where he thinks it right to do so. But where the prisoner was arrested for a criminal offence under the Larceny Act and remanded without any evidence being taken, and the offence appeared to be a serious one, and the magistrate had refused bail the judge refused to order it. R. v. Cox, 16 O. R. 228.

604. When any person has been committed for trial by any justice the prisoner, his counsel, solicitor or agent may notify the committing justice, that he will, as soon as counsel can be heard, move before a superior court of the province in which such person stands committed, or one of the judges thereof, or the judge of the county court, if it is intended to apply to such judge, under section six hundred and two, for an order to the justice to admit such prisoner to bail,—whereupon such committing justice shall, as soon as may be, transmit to the clerk of the Crown, or the chief clerk of the court, or the clerk of the county court or other proper officer, as the case may be, endorsed under his hand and seal, a certified copy of all informations, examinations and other evidence, touching the offence wherewith the prisoner has been charged, together with a copy of the warrant of commitment, and the packet containing the same shall be handed to the person applying therefor, for transmission, and it shall be certified on the outside thereof to contain the information concerning the case in question. R. S. C. c. 174, s. 93.

2. Upon such application to any such court or judge the same order concerning the prisoner being bailed or continued in custody, shall be made as if the prisoner was brought up upon a *habeas corpus*. R. S. C. c. 174, s. 94.

3. If any justice neglects or offends in anything contrary to the true intent and meaning of any of the provisions of this section, the court to whose officer any such examination, information, evidence, bailment or recognizance ought to have been delivered, shall, upon examination and proof of the offence, in a summary manner, impose such fine upon every such justice as the court thinks fit. R. S. C. c. 174, s. 95.

605. Whenever any justice or justices admit to bail any person who is then in any prison charged with the offence for which he is so admitted to bail, such justice or justices shall send to or cause to be lodged with the keeper of such prison, a warrant of deliverance under his or their hands and seals, requiring the said keeper to discharge the person so admitted to bail if he is detained for no other offence, and upon such warrant of deliverance being delivered to or lodged with such keeper, he shall forthwith obey the same. R. S. C. c. 174, s. 84.

606. Whenever a person charged with any offence has been bailed in manner aforesaid, it shall be lawful for any justice, if he sees fit, upon the application of the surety or of either of the sureties of such person and upon information being made in writing and on oath by such surety, or by some person on his behalf, that there is reason to believe that the person so bailed is about to abscond for the purpose of evading justice, to issue his warrant for the arrest of the person so bailed, and afterwards, upon being satisfied that the ends of justice would otherwise be defeated, to commit such person when so arrested to gaol until his trial or until he produces another sufficient surety or other sufficient sureties, as the case may be, in like manner as before.

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

2. Such receipt shall be in the form DD in schedule one hereto. R. S. C. c. 174, s. 85.

PART LIV.

SPEEDY TRIALS OF INDICTABLE OFFENCES.

762. The provisions of this part do not apply to the North-west Territories or the district of Keewatin. 52 V. c. 47, s. 3.

763. In this part, unless the context otherwise requires,—

(a) the expression "judge" means and includes,—

(i) in the province of Ontario, any judge of a county court, junior judge or deputy judge authorized to act as chairman of the General Sessions of the Peace, and also the judges of the provisional districts of Algoma and Thunder Bay, and the judge of the district court of Muskoka and Parry Sound, authorized respectively to act as chairman of the General Sessions of the Peace;

(ii) in the province of Quebec, in any district wherein there is a judge of the sessions, such judge of sessions, and in any district wherein there is no judge of sessions but wherein there is a district magistrate, such district magistrate, and in any district wherein there is neither a judge of sessions nor a district magistrate the sheriff of such district;

(iii) in each of the provinces of Nova Scotia, New Brunswick and Prince Edward Island, any judge of a county court;

(iv) in the province of Manitoba the chief justice, or a puisne judge of the Court of Queen's Bench, or any judge of a county court;

(v) in the province of British Columbia the chief justice or a puisne judge of the Supreme Court, or any judge of a county court;

(b) the expression "county attorney" or "clerk of the peace" includes in the provinces of Nova Scotia, New Brunswick and Prince Edward Island, any clerk of a county court, and in the province of Manitoba, any Crown attorney, the prothonotary of the Court of Queen's Bench, and any deputy prothonotary thereof, any deputy clerk of the peace, and the deputy clerk of the Crown and pleas for any district in the said province. 52 V. c. 47, s. 2.

Any court by which and any judge under Part LIV. or magistrate under LV. by whom judgment is pronounced or recorded, upon the conviction of any person for treason or any indictable offence, in addition to such sentence as may otherwise by law be passed, may condemn such person to the payment of the whole or any part of the costs or expenses incurred in and about the prosecution and conviction for the offence of which he is convicted, if to

such court it seems fit so to do; and the payment of such costs and expenses, or any part thereof, may be ordered by the court to be made out of any moneys taken from such person on his apprehension (if such moneys are his own), or may be enforced at the instance of any person liable to pay or who has paid the same in such and the same manner (subject to the provisions of this Act) as the payment of any costs ordered to be paid by the judgment or order of any court of competent jurisdiction in any civil action or proceeding may for the time being be enforced: Provided, that in the meantime, and until the recovery of such costs and expenses from the person so convicted as aforesaid, or from his estate, the same shall be paid and provided for in the same manner as if this section had not been passed; and any money which is recovered in respect thereof from the person so convicted, or from his estate, shall be applicable to the reimbursement of any person or fund by whom or out of which such costs and expenses have been paid or defrayed. 33-34 V. (U. K.) c. 23, s. 3. Code, s. 832.

If a person convicted on an indictment for assault, whether with or without battery and wounding, is ordered to pay costs as provided in section eight hundred and thirty-two he shall be liable unless the said costs are sooner paid, to three months' imprisonment, in addition to the term of imprisonment, if any, to which he is sentenced for the offence, and the court may, by warrant in writing, order the amount of such costs to be levied by distress and sale of the goods and chattels of the offender, and paid to the prosecutor, and the surplus, if any, arising from such sale, to the owner; and if such sum is so levied, the offender shall be released from such imprisonment. R. S. C. c. 174, ss. 248 and 249. Code, s. 834.

Any costs ordered to be paid by a court pursuant to the foregoing provisions shall, in case there is no tariff of fees provided with respect to criminal proceedings, be taxed by the proper officer of the court according to the lowest scale of fees allowed in such court in a civil suit.

2. If such court has no civil jurisdiction, the fees shall be those allowed in civil suits in a superior court of the province according

to the lowest scale. Code, s. 835. Costs may also be ordered on releasing an offender on probation of good conduct under s. 971, s-s. 2, and as against a prosecutor under s. 595.

A prisoner was tried and convicted for housebreaking and larceny before the judge of the county court of Yale at a sittings held by him of the county criminal court of Kootenay, there being no county judge commissioned for the latter county by the Governor-General of Canada, but the provincial statute, 53 V. c. 8, s. 9, provided that the judge of the county court of Yale should act for Kootenay until a county judge was appointed for the latter place. The commission to the judge of Yale limited his jurisdiction to certain points in the electoral district of Yale, not, however, extending to Kootenay. The majority of the court quashed the conviction, holding that the provincial statute was *ultra vires*, as giving the local legislature in effect the right to appoint county judges, and that the words in the section of the Code now under consideration, "any judge of a county court," were limited to a judge acting within the territorial jurisdiction mentioned in the commission by which he was appointed. Consequently only judges appointed for the county in which the offence is committed can legally act. Piel Ke-ark-an v. R., 2 B. C. R. (Hunter) 53.

764. The judge sitting on any trial under this part, for all the purposes thereof and proceedings connected therewith or relating thereto, shall be a court of record, and in every province of Canada, except the province of Quebec, such court shall be called "The County Court Judge's Criminal Court" of the county or union of counties or judicial district in which the same is held.

2. The record in any such case shall be filed among the records of the court over which the judge presides, and as part of such records, 52 V. c. 47, s. 4.

In Ontario by virtue of the provisions in the R. S. c. 49, the court constituted by the Act now under consideration, is a court of record, and in case of conviction before such court there is no right to a *habeas corpus* under the R. S. c. 70, s. 1. R. v. St. Denis, 8 P. R. (Ont.) 16.

765. Every person committed to gaol for trial on a charge of being guilty of any of the offences which are mentioned in section five hundred and thirty-nine as being within the jurisdiction of the General or Quarter Sessions of the Peace,

may, with his own consent (of which consent an entry shall then be made of record), and subject to the provisions herein, be tried in any province under the following provisions out of sessions and out of the regular term or sittings of the court, whether the court before which, but for such consent, the said person would be triable for the offence charged, or the grand jury thereof, is or is not then in session, and if such person is convicted, he may be sentenced by the judge. 52 V. c. 47, s. 5.

Under s. 539 of the Code, the court of general or quarter sessions of the peace has power to try any indictable offence, except those mentioned in s. 540. Thus the sessions may now try manslaughter, perjury, subornation of perjury, forgery, counterfeiting coin, and bribery at elections, under the R. S. C. c. 8, s. 116. In Ontario see the 53 V. c. 18, which, however, cannot now prevent the trial by the sessions of the homicide called manslaughter.

Formerly forgery was not triable under the Act. R. v. Scott, 1 M. L. R. 448, for it was not triable at the sessions. R. v. Herbert, 3 D. R. 381.

766. Every sheriff shall, within twenty-four hours after any prisoner charged as aforesaid is committed to gaol for trial, notify the judge in writing that such prisoner is so confined, stating his name and the nature of the charge preferred against him, whereupon, with as little delay as possible, such judge shall cause the prisoner to be brought before him. 52 V. c. 47, s. 6.

As to the duty of the sheriff in the North-west Territories, see 54 and 55 V. c. 22, s. 12, s-s. 2. See the form of the sheriff's notice in the schedule to this part.

767. The judge, upon having obtained the depositions on which the prisoner was so committed, shall state to him,

(*a*) that he is charged with the offence, describing it;

(*b*) that he has the option to be forthwith tried before such judge without the intervention of a jury, or to remain in custody or under bail as the court decides, to be tried in the ordinary way by the court having criminal jurisdiction.

2. If the prisoner dema nds a trial by jury the judge shall remand him to gaol; but if he consents to be tried by the judge without a jury the county solicitor, clerk of the peace or other prosecuting officer shall prefer the charge against him for which he has been committed for trial, and if, upon being arrainged upon the charge, the prisoner pleads guilty, the prosecuting officer shall draw up a record as nearly as may be in one of the forms MM or NN in schedule one to this Act, such plea shall be entered on the record, and the judge shall pass the sentence of the law on such prisoner, which shall have the same force and effect as if

passed by any court having jurisdiction to try the offence in the ordinary way. 52 V. c. 47. s. 7.

This section does not, in express terms, give the judge the same powers as the general sessions to punish or imprison, except where the party pleads guilty. In the latter case the judge shall pass the sentence which shall have the same force and effect as if passed at the general sessions of the peace.

Where a prisoner was convicted of receiving stolen goods and sentenced to imprisonment, it was held that the conviction and sentence were right. R. v. St. Denis, 8 P. R. (Ont.) 16.

Section 774 gives the judge the same powers as to acquitting or convicting as a jury would have on a trial at sessions, and according to the authority just cited the power to punish and imprison is incidental to the power to convict.

Under this statute it is not necessary to have more than one record, in which shall be entered the proceedings from time to time taken, until the final determination of the matter.

After the prisoner has heard the charge read to him, and has elected to have it tried by the judge and has pleaded to it, and has been tried, he cannot object to the record which has been made up against him, because it describes or lays the charge in different forms to meet the facts of the case, so long as it does not contain different distinct offences. The judge's jurisdiction is not confined to the trial only of the charge as stated in the commitment. A prisoner was committed to gaol for trial on a charge of kidnapping another person, with intent to cause such person to be secretly confined or imprisoned in Canada, which was felony under R. S. C. c. 162, s. 46. On being brought before the judge under this statute, he was charged and tried also for the other offence under the statute of, without lawful authority, forcibly seizing and confining any other person within Canada. It was held that this might be lawfully done, the prisoner being committed on a charge for which he might be tried at the sessions. Cornwall v. R., 33 Q. B. (Ont). 106. See s. 773 of the Code.

The purpose of this statute was not to compel the judge to try the prisoner upon any charge he was confined upon, in the language of that charge, but to try him on that charge in any form

in which the charge could properly be laid against him. But it was never intended that if the prisoner were committed for trial for stealing the goods of A., that the same goods should not be described in another count, if it were necessary to do so, as the goods of B., nor if he were in on a charge of larceny, that he should not also be tried for feloniously receiving the same goods, nor if he were in on a charge of unlawfully and maliciously wounding with intent to maim, that he should not be tried on another count for the same wounding with intent to do some grievous bodily harm. So it would seem also in those cases in which a jury could acquit of the offence charged, if it were not completed, and convict the prisoner of an attempt to commit it, the judge might under the statute do the same thing. *Ib.* 119, 120. As to attempts, see Code, ss. 64, 711, 712.

The record will be properly framed, if it states the offence charged in such form as the depositions or evidence show, that it should have been laid, and the judge is not to call for the warrant of commitment to find out what offence the prisoner is charged with, but he is to obtain "the depositions on which the prisoner was so committed," and he is to state to the prisoner the offence with which he is there charged.

Where the judge has appointed a day for trial under the 772nd section, and the prisoner, on being brought up before the judge on the appointed day, declares his readiness to proceed, the judge has nevertheless power on the application of the counsel for the Crown to adjourn the trial to a subsequent day, and the record is not objectionable in failing to mention the cause of adjournment. Cornwall v. R., 33 Q. B. (Ont,) 106. See s. 777.

The judge has also power to amend the record by changing the name of the prisoner. In the case in question, Rufus Bratton was changed to James Rufus Bratton. *Ib.*

A record which follows the form provided by the statute is sufficient, although the special jurisdiction conferred by the Act is not shewn. The notice from the sheriff under section 766 need only shew the nature of the charge against the prisoner, and need not charge the different offences of which the prisoner is tried as

in the counts of an indictment. *Ib.* See the form of this notice in the schedule to this part.

768. If one of two or more prisoners charged with the same offence demands a trial by jury, and the other or others consent to be tried by the judge without a jury, the judge, in his discretion, may remand all the said prisoners to gaol to await trial by a jury. 52 V. c. 47, s. 8.

769. If under Part LV. or Part LVI., any person has been asked to elect whether he would be tried by the magistrate or justices of the peace, as the case may be, or before a jury, and he has elected to be tried before a jury, and if such election is stated in the warrant of committal for trial, the sheriff and judge shall not be required to take the proceedings directed by this part. 52 V. c. 47, s. 9.

2. But if such person, after his said election to be tried by a jury, has been committed for trial, he may, at any time before the regular term or sittings of the court at which such trial by jury would take place, notify the sheriff that he desires to re-elect; whereupon it shall be the duty of the sheriff to proceed as directed by section seven hundred and sixty-six, and thereafter the person so committed shall be proceeded against as if his said election in the first instance had not been made. 53 V. c. 37, s. 30.

Part LV. s. 782, relates to the summary trial of indictable offences; and Part LVI. s. 809, to the trial of juvenile offenders. See also s. 771.

770. Proceedings under this part commenced before any judge may, where such judge is for any reason unable to act, be continued before any other judge competent to try prisoners under this part in the same judicial district, and such last mentioned judge shall have the same powers with respect to such proceedings as if such proceedings had been commenced before him, and may cause such portion of the proceedings to be repeated before him as he shall deem necessary. 53 V. c. 37, s. 30.

771. If, on the trial under Part LV. or Part LVI. of this Act of any person charged with any offence triable under the provisions of this part, the magistrate or justices of the peace decide not to try the same summarily, but commit such person for trial, such person may afterwards, with his own consent, be tried under the provisions of this part. 52 V. c. 47, s. 10.

772. If the prisoner upon being so arraigned and consenting as aforesaid pleads not guilty the judge shall appoint an early day, or the same day, for his trial, and the county attorney or clerk of the peace shall subpœna the witnesses named in the depositions, or such of them and such other witnesses as he thinks requisite to prove the charge, to attend at the time appointed for such trial, and the judge may proceed to try such prisoner, and if he be found guilty sentence shall be passed as hereinbefore mentioned; but if he be found not guilty the judge shall immediately discharge him from custody, so far as respects the charge in question. 52 V. c. 47, s. 11.

773. The county attorney or clerk of the peace or other prosecuting officer may, with the consent of the judge, prefer against the prisoner a charge or charges for any offence or offences for which he may be tried under the provisions of this part other than the charge or charges for which he has been committed to gaol for trial, although such charge or charges do not appear or are not mentioned in the depositions upon which the prisoner was so committed. 52 V. c. 47, s. 12.

See Cornwall v. R., 33 Q. B. (Ont.) 106, *ante*, pp. 112-113.

774. The judge shall, in any case tried before him, have the same power as to acquitting or convicting, or convicting of any other offence than that charged, as a jury would have in case the prisoner were tried at a sitting of any court mentioned in this part, and may render any verdict which may be rendered by a jury upon a trial at a sitting of any such court. 52 V. c. 47, s. 13.

The prisoners were charged with having defrauded one C. by a game called three card monte. They consented to be summarily tried; when brought up for trial, the Crown Attorney asked for and obtained leave to substitute a charge of combining to obtain money by false pretences, the prisoners objecting. The trial proceeded without the consent of the prisoners obtained to be tried summarily for this offence. On error brought the court held that the prisoners consent to be summarily tried on the substituted charge should distinctly appear and that in its absence the conviction was bad. Goodman v. The Queen, 3 O. R. 18.

But such objection cannot be taken on *habeas corpus*. R. v. Goodman, 2 O. R. 468.

775. If a prisoner elects to be tried by the judge without the intervention of a jury the judge may, in his discretion, admit him to bail to appear for his trial, and extend the bail, from time to time, in case the court be adjourned or there is any other reason therefor; and such bail may be entered into and perfected before the clerk. 52 V. c. 47, s. 14.

776. If a prisoner elects to be tried by a jury the judge may, instead of remanding him to gaol, admit him to bail, to appear for trial at such time and place and before such court as is determined upon, and such bail may be entered into and perfected before the clerk. 52 V. c. 47, s. 15.

777. The judge may adjourn any trial from time to time until finally terminated. 52 V. c. 47, s. 16.

778. The judge shall have all powers of amendment which any court mentioned in this part would have if the trial was before such court. 52 V. c. 47, s. 17.

779. Any recognizance taken under section five hundred and ninety-eight of this Act, for the purpose of binding a prosecutor or a witness, shall, if the person committed for trial elects to be tried under the provisions of this part, be obligatory on each of the persons bound thereby, as to all things therein mentioned with reference to the trial by the judge under this part, as if such recognizance had been originally entered into for the doing of such things with reference to such trial: Provided, that at least forty-eight hours' notice in writing shall be given, either personally or by leaving the same at the place of residence of the persons bound by such recognizance as therein described, to appear before the judge at the place where such trial is to be had. 53 V. c. 37, s. 29.

Notice is not ordinarily required. See Code, s. 598, *ante*, p. 98.

780. Every witness, whether on behalf of the prisoner or against him, duly summoned or subpœnaed to attend and give evidence before such judge, sitting on any such trial, on the day appointed for the same, shall be bound to attend and remain in attendance throughout the trial; and if he fails so to attend he shall be held guilty of contempt of court, and may be proceeded against therefor accordingly. 52 V. c. 47, s. 18.

See also Code, s. 677.

781. Upon proof to the satisfaction of the judge of the service of subpœna upon any witness who fails to attend before him, as required by such subpœna, and upon such judge being satisfied that the presence of such witness before him is indispensable to the ends of justice, he may, by his warrant, cause the said witness to be apprehended and forthwith brought before him to give evidence as required by such subpœna, and to answer for his disregard of the same; and such witness may be detained on such warrant before the said judge, or in the common gaol, with a view to secure his presence as a witness; or, in the discretion of the judge, such witness may be released on recognizance with or without sureties, conditioned for his appearance to give evidence as therein mentioned, and to answer for his default, in not attending upon the said subpœna, as for a contempt; and the judge may, in a summary manner, examine into and dispose of the charge of contempt against the said witness who, if found guilty thereof, may be fined or imprisoned, or both,—such fine not to exceed one hundred dollars, and such imprisonment to be in the common gaol, with or without hard labor, and not to exceed the term of ninety days, and he may also be ordered to pay the costs incident to the execution of such warrant and of his detention in custody.

2. Such warrant may be in the form OO, and the conviction for contempt in the form PP, in schedule one to this Act, and the same shall be authority to the persons and officers therein required to act, to do as therein they are respectively directed. 52 V. c. 47, s. 19.

Section 743 of the Code gives power to the judge to reserve a case for the opinion of the court. Prior to the R. S. C. c. 174, s. 259, there was no such power. See R. v. Malouin, 2 D. R. 66.

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 or any one on his behalf being present. The prisoner having been found guilty, it was held on a case reserved, that there was no authority for the judge taking a view of the place and his doing so 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; and the conviction was quashed. R. v. Petrie, 20 O. R. 317.

Section 722 of the Code provides for a view by the jury. It does not seem to give any power to the court or judge to have such view when there is no jury.

SCHEDULE ONE—FORMS UNDER PART LIV.

MM—(*Section* 767.)

FORM OF RECORD WHEN THE PRISONER PLEADS NOT GUILTY.

Canada,
Province of ,
County of .

Be it remembered that A. B. being a prisoner in the gaol of the said county, committed for trial on a charge of having on day of , in the year , stolen, etc. (*one cow, the property of* C. D., *or as the case may be, stating briefly the offence*) and having been brought before *me* (*describe the judge*) on the day of , in the year , and asked by me if he consented to be tried before me without the intervention of a jury, consented to be so tried; and that upon the day of , in the year , the said A. B., being again brought before me for trial, and declaring himself ready, was arraigned upon the said charge and pleaded not guilty; and after hearing the evidence adduced, as well in support of the said charge as for the prisoner's defence (*or as the case may be*), I find him to be guilty of the offence with which he is charged as aforesaid, and I accordingly sentence him to (*here insert*

such sentence as the law allows and the judge thinks right), (*or* I find him not guilty of the offence with which he is charged, and discharge him accordingly).

Witness my hand at , in the county of , this day of , in the year .

O. K.,
Judge.

NN—(*Section* 767.)

FORM OF RECORD WHEN THE PRISONER PLEADS GUILTY.

Canada,
Province of ,
County of .

Be it remembered that A. B. being a prisoner in the gaol of the said county, on a charge of having on the day of , in the year , stolen, etc., (*one cow, the property of* C. D., *or as the case may be, stating briefly the offence*), and being brought before me (*describe the judge*) on the day of , in the year , and asked by me if he consented to be tried before me without the intervention of a jury, consented to be so tried; and that the said A. B. being then arraigned upon the said charge, he pleaded guilty thereof, whereupon I sentenced the said A. B. to (*here insert such sentence as the law allows and the judge thinks right.*)

Witness my hand this day of , in the year .

O. K.,
Judge.

OO—(*Section* 781.)

WARRANT TO APPREHEND WITNESS.

Canada,
Province of ,
County of .

To all or any of the constables and other peace officers in the said county of .

Whereas it having been made to appear before me, that E. F., of , in the said county of , was likely to give material evidence on behalf of the prosecution (*or* defence, *as the case may be*) on the trial of a certain charge of (*as theft, or as the case may be*), against A. B., and that the said E. F. was duly subpœnaed (*or* bound under recognizance) to appear on the day of , in the year , at , in the said county at o'clock (forenoon *or* afternoon, *as the case may be*), before me, to testify what he knows concerning the said charge against the said A. B.

And whereas proof has this day been made before me, upon oath of such subpœna having been duly served upon the said E. F., (*or* of the said E. F. having been duly bound under recognizance to appear before me, *as the case may be*); and whereas the said E. F. has neglected to appear at the trial and place appointed, and no just excuse has been offered for such neglect: These are therefore to command you to take the said E. F. and to bring him and have him forthwith before me, to testify what he knows concerning the said charge against the said A. B., and also to answer his contempt for such neglect.

Given under my hand this day of , in the year .

O. K.,
Judge.

PP—(*Section* 781.)

CONVICTION FOR CONTEMPT.

Canada,
Province of ,
County of .

Be it remembered that on the day of , in the year , in the county of , E. F. is convicted before me, for that he the said E. F. did not attend before me to give evidence on the trial of a certain charge against one A. B. of (*theft, or as the case may be*), although duly subpœnaed (*or* bound by recognizance to appear and give evidence in that behalf, *as the case may be*) but made default therein, and has not shown before me any sufficient excuse for such default, and I adjudge the said E. F., for his said offence, to be imprisoned in the common gaol of the county of , at , for the space of there to be kept at hard labour (*and in case a fine is also intended to be imposed, then proceed*) and I also adjudge that the said E. F. do forthwith pay to and for the use of Her Majesty a fine of dollars, and in default of payment, that the said fine, with the cost of collection, be levied by distress and sale of the goods and chattels of the said E. F. (*or in case a fine alone is imposed, then the clause of imprisonment is to be omitted*).

Given under my hand at , in the said county of , the day and year first above mentioned.

O. K.,
Judge.

ACCUSATION. (Not in statute).

In the County Court Judge's Criminal Court for the County of
Province of ,
County of , } The day of , A. D. 18 , at , in the County of
to wit: , before Esquire, County Judge of the said County, exercising criminal jurisdiction under the provisions of Part LIV. of the Code for the Speedy Trials of indictable offences, A. B., who is

committed for trial to the Common Gaol of the said County, and is now a prisoner in close custody therein, stands charged this day before the said Judge, sitting in public open court assembled for the trial of the said A. B. First count, for that he, the said A. B., on the day of , in the year A.D. 18 , at the city of , in the said county, did without lawful authority, forcibly seize and confine one C. D. within Canada, against the form of the Statute in such case made and provided, and against the peace of our Lady the Queen, Her Crown and Dignity. Second count, and for that he, the said A. B., afterwards, to wit, on the day and year last aforesaid at the city and county aforesaid, without lawful authority, did kidnap one C. D., with intent to cause the said C. D. to be unlawfully transported out of Canada against his will, against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, Her Crown and Dignity.

(Signed) E. F.,
County Crown Attorney, County of .

A. B., within named, upon the within charge being read to him by the Judge in open Court, and being informed by the judge that he has his option either of being forthwith tried without the intervention of a jury upon the said charge, or of remaining untried until the next court of Oyer and Terminer of this county, consents to be now tried upon the said charge, by the said judge, without a jury, and the prisoner pleads not guilty to the said charge.

"ORDER AMENDING ACCUSATION.

"*The County Court Judge's Criminal Court, County of* .

"*The Queen* v. *A. B.*

"It is ordered that the accusation be amended by the inserting the name James before the name C. D.

"By the court,

"(Signed) "E. F.,
"Clerk of the Peace."

SHERIFF'S NOTICE. (Not in Statute.)

To His Honour the County Judge of the
County of

Pursuant to the 766th section of the Act for the Speedy Trials of Indictable Offences.

I, , Sheriff of the said County, certify that the several persons whose names are mentioned in the first column of the schedule hereunder written, were committed for trial to the common gaol of the said county, and were received by the gaoler of the said gaol on the days severally mentioned in the second column of the said schedule, opposite the names of the said persons respectively, and were so committed to the said gaol, and were received each severally, under and by virtue of a warrant from L. L., P. M., on a charge of being guilty of an offence

which may be tried at a General Sessions of the Peace, and that the nature of the charge against the said several persons respectively as contained in the warrant of commitment is set forth in the third column of said schedule opposite the names of the said several persons respectively.

SCHEDULE ABOVE REFERRED TO.

Name of prisoner.	Time when committed for trial.	Nature of charge as contained in the Warrant of Commitment.
A. B.	15 June, 1886.	

(Signed)

Sheriff of the County of

PART LV.

SUMMARY TRIAL OF INDICTABLE OFFENCES.

782. In this part, unless the context otherwise requires, (*a*) the expression "magistrate" means and includes—

(i) in the provinces of Ontario, Quebec and Manitoba, any recorder, judge of a county court, being a justice of the peace, commissioner of police, judge of the sessions of the peace, police magistrate, district magistrate, or other functionary or tribunal, invested by the proper legislative authority, with power to do alone such acts as are usually required to be done by two or more justices of the peace, and acting within the local limits of his or of its jurisdiction.

(ii) in the provinces of Nova Scotia and New Brunswick, any recorder, judge of a county court, stipendiary magistrate or police magistrate, acting within the local limits of his jurisdiction, and any commissioner of police and any functionary, tribunal or person invested by the proper legislative authority with power to do alone such acts as are usually required to be done by two or more justices of the peace;

(iii) in the provinces of Prince Edward Island and British Columbia and in the district of Keewatin, any two justices of the peace sitting together, and any functionary or tribunal having the powers of two justices of the peace;

(iv) in the North-west Territories, any judge of the Supreme Court of the said territories, any two justices of the peace sitting together, and any functionary or tribunal having the powers of two justices of the peace;

(*b*) the expression "the common gaol or other place of confinement," in the case of any offender whose age at the time of his conviction does not, in the opinion of the magistrate, exceed sixteen years, includes any reformatory prison provided for the reception of juvenile offenders in the province in which the conviction referred to takes place, and to which by the law of that province the offender may be sent; and

(*c*) the expression "property" includes everything included under the same expression or under the expression "valuable security," as defined by this Act, and in the case of any "valuable security," the value thereof shall be reckoned in the manner prescribed in this Act. R. S. C. c. 176, s. 2.

See Code, s. 3, v. (i), (ii), (iii), p. 34 and cc. p. 36 as to the meaning of the expression "property" and "valuable security."

Under this part the court has the same power to award costs as under part LIV. See ss. 832-834 and 835 of the Code, *ante*, pp. 108-109.

The magistrate has also power in addition to any sentence imposed upon the person convicted, to require him forthwith to enter into his own recognizance, or to give security to keep the peace and be of good behaviour for any term not exceeding two years. See s. 958 as amended by the 56 V. c. 32.

He may also make a conditional release of a first offender in certain cases. See Code, ss. 971-974.

783. Whenever any person is charged before a magistrate,

(*a*) with having committed theft, or obtained money or property by false pretenses, or unlawfully received stolen property, and the value of the property alleged to have been stolen, obtained or received, does not, in the judgment of the magistrate, exceed ten dollars; or

(*b*) with having attempted to commit theft; or

(*c*) with having committed an aggravated assault by unlawfully and maliciously inflicting upon any other person, either with or without a weapon or instrument, any grievous bodily harm, or by unlawfully and maliciously wounding any other person; or

(*d*) with having committed an assault upon any female whatsoever, or upon any male child whose age does not, in the opinion of the magistrate, exceed fourteen years, such assault being of a nature which cannot, in the opinion of the magistrate, be sufficiently punished by a summary conviction before him under any other part of this Act, and such assault, if upon a female, not amounting, in his opinion, to an assault with intent to commit a rape; or

(*e*) with having assaulted, obstructed, molested or hindered any peace officer or public officer in the lawful performance of his duty, or with intent to prevent the performance thereof; or

(*f*) with keeping or being an inmate, or habitual frequenter of any disorderly house, house of ill-fame or bawdy-house; or

(*g*) with using or knowingly allowing any part of any premises under his control to be used—

(i) for the purpose of recording or registering any bet or wager, or selling any pool; or

(ii) keeping, exhibiting, or employing, or knowingly allowing to be kept, exhibited or employed, any device or apparatus for the purpose of recording or registering any bet or wager, or selling any pool; or

(*h*) becoming the custodian or depositary of any money, property, or valuable thing staked, wagered or pledged; or

(*i*) recording or registering any bet or wager, or selling any pool, upon the result of any political or municipal election, or of any race, or of any contest or trial of skill or endurance of man or beast,—

the magistrate may, subject to the provisions hereinafter made, hear and determine the charge in a summary way. R. S. C. c. 176, s. 3.

Offences against s. 356 of the Code are not triable summarily under this Act. R. v. Young, 5 O. R. 400.

The aggravated assault mentioned in s. 783 (*c*), is different from that under s. 263 of the Code, where the words unlawfully and maliciously are not used. See also ss. 241, 242.

A charge of an assault and beating is not a charge of aggravated assault, and a complaint of the former will not sustain a conviction of the latter under the statute, though when the party is before the magistrate, the charge of aggravated assault may be made in writing and followed by a conviction therefor. *Re* McKinnon, 2 U. C. L. J. N. S. 327.

In reference to keeping a house of ill-fame, see Code, s. 207. The language of clause (*f*) of s. 783, does not seem to constitute the offence a statutable one. It seems rather to indicate that such offence, and the other specified offences therein mentioned, shall be within the jurisdiction of the magistrate, and shall be tried and disposed of by him in the manner therein prescribed. A conviction for keeping a house of ill-fame, alleging it to be "against the form of a statute in such case made and provided" is not void on that ground. If this Act constitutes the keeping of a house of ill-fame a statutable offence, the reference to the statute would be right, and if it is only a common law offence, the reference to the statute may be rejected as surplusage. R. v. Flint, 4 O. R. 214.

This statute makes the being such habitual frequenter a substantial offence, punishable as in s. 788, and does not merely create a procedure for trial and punishment. But a conviction for being an *unlawful* instead of an habitual frequenter of a house of ill-fame, and which adjudged the payment of costs which is unauthorized by the statute must be quashed. R. v. Clark, 2 O. R. 523.

The prisoner was convicted by the police magistrate for the city of Toronto, for that she "did on," etc., "at the said City of Toronto, keep a common, disorderly, bawdy-house on Queen Street, in the said city," etc., and committed to goal at hard labour for six months. A *habeas corpus* and *certiorari* issued; in return, to which the commitment, conviction, information and depositions,

were brought up. On application for her discharge, no motion being made to quash the conviction, it was held,—

(1) No objection that the commitment stated the offence to have been committed on the 11th August instead of the 10th, as in the conviction the variance not being material to the merits, and the court not being able to go behind the return and commitment which was set forth.

(2) Nor that the commitment charged that the prisoner "was the keeper of," and the conviction that "she did keep," both differing from the statute, which designates the offence as "keeping any disorderly house," etc.; for it would seem the court could not go behind the commitment, and all these expressions conveyed but one idea.

(3) Nor that the commitment did not follow the form of conviction given in the statute, in showing that the party was charged before the convicting magistrate, *i. e.*, charged as the statute requires, namely, put upon her trial and asked whether she was guilty or not guilty, nor whether she pleaded to the charge or confessed it. It might and probably would be, a defect in the conviction, if it did not pursue the statutory form in showing that the party was charged, more especially as by this section of the Act the jurisdiction is made to depend upon the fact of the party being charged before the convicting justice. That point, however, was not decided; the court merely intimating that it might or might not be a defect in the conviction. Unless the commitment must contain all that the conviction does or ought to contain, it is unnecessary to state the information in it; and more especially as by the form given by the statute it does not appear necessary that the information should be set out in the conviction.

(4) Nor that the conviction was not sustained by the information, the latter being that the defendant was the keeper of a well-known disorderly house; and the former that the prisoner did keep a common, disorderly bawdy-house, for the commitment would not be void on the face of it because of a variance between the original information and the conviction made after hearing evidence. But if the prisoner had been charged in the informa-

tion, and on being called on to answer had confessed the information, and then had been convicted of matter not contained in the information, no doubt the conviction could be quashed; but even in that case, while it stood unreversed, it would warrant a commitment following its terms.

(5) Nor that the offence of "keeping a common disorderly bawdy-house," was not sufficiently certain; for the legal meaning of the last two words is clear, and a house will not be less a public nuisance because it is found to be disorderly as well as bawdy; and if keeping a disorderly house be no offence the term becomes mere surplusage, and would not vitiate an otherwise sufficient statement. But the statute does give jurisdiction over persons charged with keeping any disorderly house, house of ill-fame, or bawdy-house. R. v. Munro, 24 Q. B. (Ont.) 44.

It would seem that though a magistrate may have a general jurisdiction to hear any complaint against a disorderly inn or house, he has no right to issue a warrant to arrest a casual guest visiting a licensed tavern as a guest at a time subsequent to the charge, and in no way present at or assisting in any disturbance or disorder. Cleland v. Robinson, 11 C. P. (Ont.) 421.

The owner of a house letting it to several young women for the purpose of prostitution cannot be indicted for keeping a disorderly house. R. v. Stannard, 9 Cox, 405; R. v. Barrett. *Ib.* 255.

As to the evidence necessary to show that a house is a house of ill-fame, see R. v. Newton, 11 P. R. (Ont.) 98. It seems that the evidence of a witness who speaks of the character by reputation only is not sufficient, some improper act must be proved.

A master who instructs his servant to keep a disorderly house would be liable as a principal, and the servant as aiding and abetting. Wilson v. Stewart, 9 Jur. N. S. 1130.

It is not necessary that the disorderly conduct should be visible from the exterior of the house. R. v. Rice, L. R. 1 C. C. R. 21.

There may be a joint conviction against husband and wife for keeping a house of ill-fame. The keeping has nothing to do with the ownership of the house, but with the management of it, in which the wife may have as great or a greater share than her

husband. R. v. Warren, 16 O. R. 590. And see Code, s. 180. As to search for a woman or girl in a house of ill-fame, see s. 574 of the Code.

784. The jurisdiction of such magistrate is absolute in the case of any person charged with keeping or being an inmate or habitual frequenter of any disorderly house, house of ill-fame or bawdy-house, and does not depend on the consent of the person charged to be tried by such magistrate, nor shall such person be asked whether he consents to be so tried; nor do the provisions of this part affect the absolute summary jurisdiction given to any justice or justices of the peace in any case by any other part of this Act. R. S. C. c. 176, s. 4.

2. The jurisdiction of the magistrate is absolute in the case of any person who, being a seafaring person and only transiently in Canada, and having no permanent domicile therein, is charged, either within the city of Quebec as limited for the purpose of the police ordinance, or within the city of Montreal as so limited, or in any other seaport city or town in Canada where there is such magistrate, with the commission therein of any of the offences hereinbefore mentioned, and also in the case of any other person charged with any such offence on the complaint of any such seafaring person whose testimony is essential to the proof of the offence; and such jurisdiction does not depend on the consent of any such person to be tried by the magistrate, nor shall such person be asked whether he consents to be so tried. R. S. C. c. 176, s. 5.

3. The jurisdiction of a stipendiary magistrate in the province of Prince Edward Island, and of a magistrate in the district of Keewatin, under this part, is absolute without the consent of the person charged. 52 V. c. 46, s. 1.

Under this Act the Recorder's Court of the City of Montreal has jurisdiction over charges of keeping houses of ill-fame within the city. *Ex parte* Cherrier, 5 L. N. 343.

The police limits of the City of Montreal mean the territory over which the corporation has police jurisdiction, and are co-extensive with the corporation. *Ib.*

785. If any person is charged, in the province of Ontario before a police magistrate or before a stipendiary magistrate in any county, district or provisional county in such province, with having committed any offence for which he may be tried at a Court of General Sessions of the Peace, or if any person is committed to a gaol in the county, district or provisional county, under the warrant of any justice of the peace, for trial on a charge of being guilty of any such offence, such person may, with his own consent, be tried before such magistrate, and may, if found guilty, be sentenced by the magistrate to the same punishment as he would have been liable to if he had been tried before the court of general sessions of the peace. R. S. C. c. 176, s. 7.

As to the jurisdiction of the sessions, see ss. 539 and 540 of the Code, *ante*, p. 111. There is an appeal from the decision of a magistrate proceeding under this section. See Code, s. 742.

784. Whenever the magistrate, before whom any person is charged as aforesaid, proposes to dispose of the case summarily under the provisions of this part, such magistrate, after ascertaining the nature and extent of the charge, but before the formal examination of the witnesses for the prosecution, and before calling on the person charged for any statement which he wishes to make, shall state to such person the substance of the charge against him, and (if the charge is not one that can be tried summarily without the consent of the accused) shall then say to him these words, or words to the like effect: "Do you consent that the charge against you shall be tried by me, or do you desire that it shall be sent for trial by a jury at the (*naming the court at which it can probably soonest be tried*);" and if the person charged consents to the charge being summarily tried and determined as aforesaid, or if the power of the magistrate to try it does not depend on the consent of the accused, the magistrate shall reduce the charge to writing and read the same to such person, and shall then ask him whether he is guilty or not of such charge. If the person charged confesses the charge the magistrate shall then proceed to pass such sentence upon him as by law may be passed in respect to such offence, subject to the provisions of this Act; but if the person charged says that he is not guilty, the magistrate shall then examine the witnesses for the prosecution, and when the examination has been completed, the magistrate shall inquire of the person charged whether he has any defence to make to such charge, and if he states that he has a defence the magistrate shall hear such defence, and shall then proceed to dispose of the case summarily. R. S. C. c. 176, ss. 8 and 9.

Under this Act, the magistrate may, before any formal examination of witnesses, ascertain the nature and extent of the charge, and if the party consents to be tried summarily, may reduce it into writing. It would seem that the magistrate may then (that is when a person is charged before him prior to the formal examination of witnesses) reduce the charge into writing, and try the party on the charge thus reduced to writing, and if this is the meaning of the statute, it would not signify whether the original information and warrant to apprehend did or did not state a charge in the precise language of the Act. But the magistrate must either, by the original information, or by the charge which he makes when the party is before him, have the charge in writing, and must read it to the prisoner, and ask him whether he is guilty or not. *Re* McKinnon, 2 U. C. L. J. N. S. 327.

787. In the case of an offence charged under paragraph (*a*) or (*b*) of section seven hundred and eighty-three, the magistrate, after hearing the whole case for the prosecution and for the defence, shall, if he finds the charge proved, convict the person charged and commit him to the common gaol or other place of confinement, there to be imprisoned, with or without hard labour, for any term not exceeding six months. R. S. C. c. 176, s. 10.

788. In any case summarily tried under paragraph (*c*), (*d*), (*e*), (*f*), (*g*), (*h*) or (*i*) of section seven hundred and eighty-three, if the magistrate finds the charge proved, he may convict the person charged and commit him to the common gaol or other place of confinement, there to be imprisoned, with or without hard labour, for any term not exceeding six months, or may condemn him to pay a fine not exceeding, with the costs in the case, one hundred dollars, or to both fine and imprisonment not exceeding the said sum and term ; and such fine may be levied, by warrant of distress under the hand and seal of the magistrate, or the person convicted may be condemned, in addition to any other imprisonment on the same conviction, to be committed to the common gaol or other place of confinement for a further term not exceeding six months, unless such fine is sooner paid. R. S. C. c. 176, s. 11.

It appears that no costs can be added to the fines under this section. R. v. Clark, 2 O. R. 523.

Under this section the amount of the costs in the case must be deducted from the $100, and the balance or difference is the utmost limit of the fine, and a fine of $100 without costs cannot be imposed, for the costs referred to are not those which the offender is liable to pay but the costs in the case. R. v. Cyr, 12 P. R. (Ont.) 24.

This section authorizes that the fine may be levied by warrant of distress under the hand and seal of the magistrate, or the party convicted may be condemned in addition to any other imprisonment on the same conviction, to be committed to the common gaol for a further period not exceeding six months unless such fine be sooner paid. One of two alternatives only for the collection of the fine is authorized, either distress or commitment for a further period unless the fine be sooner paid. Where a conviction for keeping a disorderly house and house of ill-fame adjudged that the fine should be levied by distress and sale, and then in default of sufficient distress or of non-payment it was ordered that the defendant should be further imprisoned, it was held that this was more than a mere formal defect, although it related to one part of the penalty,

namely, the mode of enforcing payment of the fine, and that it vitiated the whole conviction. R. v. Richardson, 11 P. R. (Ont.) 95. See also *Re* Slater, 9 U. C. L. J. 21.

The defendant was convicted under this statute for keeping a house of ill-fame, and the conviction merely ordered but did not adjudge any imprisonment or any forfeiture of the fine imposed, and this was held bad as substituting the personal order of the magistrate for a condemnation or adjudication, besides the order to pay did not necessarily imply a forfeiture, and without it there is no right to pay the fine for public purposes. R. v. Newton, 11 P. R. (Ont.) 98.

But the warrant of commitment for non-payment of the fine should direct that the fine be paid to the gaoler, otherwise he cannot receive it officially, and how is he to know whether it has been paid or not. R. v. Newton, *supra*. See Code, s. 901.

A commitment setting out a conviction "for that the prisoner unlawfully did commit an aggravated assault," (omitting the word "maliciously") is sufficient. See Code, s. 263.

A typographical error in the date of the commitment contradicted by the body of the document does not invalidate the commitment under this section. *Ex parte* McIntosh, 5 L. N. 4.

The charge against the prisoner who was brought up on a *habeas corpus* was "for keeping a bawdy-house for the resort of prostitutes in the City of Winnipeg." "Keeping a bawdy-house" is in itself a substantive offence, so is "keeping a house for the resort of prostitutes," but the court held that there was only one offence charged, and that the commitment was good, for calling a house kept for the resort of prostitutes a bawdy-house, does not render keeping it less a crime. R. v. McKenzie, 2 M. L. R. 168.

789. When any person is charged before a magistrate with thef[illegible] or [illegible]th having obtained property by false pretenses, or with having unlawf[illegible]eived stolen property, and the value of the property stolen, obtained or rec[illegible] exceeds ten dollars, and the evidence in support of the prosecution is, in the opinion of the magistrate, sufficient to put the person on his trial for the offence charged, such magistrate, if the case appears to him to be one which may properly be disposed of in a summary way, and may be adequately punished by virtue of the powers conferred by this part, shall reduce the charge to writing, and shall read it to the said person, and unless such person is one who can be tried summarily

without his consent, shall then put to him the question mentioned in section seven hundred and eighty-six, and shall explain to him that he is not obliged to plead or answer before such magistrate, and that if he does not plead or answer before him, he will be committed for trial in the usual course. R. S. C. c. 176, s. 12.

790. If the person charged as mentioned in the next preceding section consents to be tried by the magistrate, the magistrate shall then ask him whether he is guilty or not guilty of the charge, and if such person says that he is guilty, the magistrate shall then cause a plea of guilty to be entered upon the proceedings, and sentence him to the same punishment as he would have been liable to if he had been convicted upon indictment in the ordinary way; and if he says that he is not guilty, the magistrate shall proceed as provided in section seven hundred and eighty-six. 52 V. c. 46, s. 2.

791. If, in any proceeding under this part, it appears to the magistrate that the offence is one which, owing to a previous conviction of the person charged, or from any other circumstance, ought to be made the subject of prosecution by indictment rather than to be disposed of summarily, such magistrate may, before the accused person has made his defence, decide not to adjudicate summarily upon the case; but a previous conviction shall not prevent the magistrate from trying the offender summarily, if he thinks fit so to do. R. S. C. c. 176, s. 14.

792. If, when his consent is necessary, the person charged elects to be tried before a jury, the magistrate shall proceed to hold a preliminary inquiry as provided in Parts XLIV. and XLV., and if the person charged is committed for trial, shall state in the warrant of committal the fact of such election having been made. R. S. C. c. 176, s. 15.

793. In every case of summary proceedings under this part the person accused shall be allowed to make his full answer and defence, and to have all witnesses examined and cross-examined by counsel or solicitor. R. S. C. c. 176, s. 16.

794. Every court held by a magistrate for the purposes of this part shall be an open public court.

The former statute required that a written or printed notice of the holding of the court should be posted up and non-compliance with this section as to the notice was held not to invalidate a conviction. R. v. Munro, 24 Q. B. (Ont.) 44.

795. The magistrate before whom any person is charged under the provisions of this part may, by summons, require the attendance of any person as a witness upon the hearing of the case, at a time and place to be named in such summons, and such magistrate may bind, by recognizance, all persons whom he considers necessary to be examined, touching the matter of such charge, to attend at the time and place appointed by him and then and there to give evidence upon the

hearing of such charge; and if any person so summoned, or required or bound as aforesaid, neglects or refuses to attend in pursuance of such summons or recognizance, and if proof is made of such person having been duly summoned as hereinafter mentioned, or bound by recognizance as aforesaid, the magistrate before whom such person should have attended may issue a warrant to compel his appearance as a witness. R. S. C. c. 176, s. 18.

796. Every summons issued under the provisions of this part may be served by delivering a copy of the summons to the person summoned, or by delivering a copy of the summons to some inmate of such person's usual place of abode apparently over sixteen years of age; and every person so required by any writing under the hand of any magistrate to attend and give evidence as aforesaid, shall be deemed to have been duly summoned. R. S. C. c. 176, s. 19.

See *ante*, p. 57.

797. Whenever the magistrate finds the offence not proved, he shall dismiss the charge, and make out and deliver to the person charged a certificate under his hand stating the fact of such dismissal. R. S. C. c. 176, s. 20.

798. Every conviction under this part shall have the same effect as a conviction upon indictment for the same offence. R. S. C. c. 176, s. 22.

Where there has been a summary conviction for assault on a statute providing that such conviction shall have the same effect as a conviction for the offence upon an indictment and the person assaulted subsequently dies of injuries caused by the acts constituting the assault, the conviction for assault is no bar to an indictment for murder or manslaughter. R. v. Friel, 17 Cox, 325.

This section does not take away the right to a *certiorari* in the case of a void conviction. R. v. Richardson, 11 P. R. (Ont.) 95.

799. Every person who obtains a certificate of dismissal or is convicted under the provisions of this part, shall be released from all further or other criminal proceedings for the same cause. R. S. C. c. 176, s. 23.

See as to evidence of conviction or dismissal, s. 802.

800. No conviction, sentence or proceeding under the provisions of this part shall be quashed for want of form; and no warrant of commitment upon a conviction shall be held void by reason of any defect therein, if it is therein alleged that the offender has been convicted, and there is a good and valid conviction to sustain the same. R. S. C. c. 176, s. 24.

A conviction charged that the prisoner did "unlawfully and maliciously cut and wound one Mary Kelly, with intent then and there to do her grievous bodily harm." The word "feloniously"

was not used, and the court held that the conviction could not be held to be for a felony, and the addition of the words "with intent to do grievous bodily harm" did not vitiate the conviction as for the statutable misdemeanor, under the R. S. C. c. 162, s. 14, and the conviction having adjudged the defendant to be imprisoned at hard labour for a year, this was held proper under the Act. R. v. Boucher, 8 P. R. (Ont.) 20.

801. The magistrate adjudicating under the provisions of this part shall transmit the conviction or a duplicate of a certificate of dismissal, with the written charge, the depositions of witnesses for the prosecution and for the defence, and the statement of the accused, to the next court of general or quarter sessions of the peace or to the court discharging the functions of a court of general or quarter sessions of the peace, for the district, county or place, there to be kept by the proper officer among the records of the court. R. S. C. c. 176, s. 25.

802. A copy of such conviction, or of such certificate of dismissal, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction or dismissal for the offence mentioned therein, in any legal proceedings. R. S. C. c. 176, s. 26.

803. The magistrate by whom any person has been convicted under the provisions of this part may order restitution of the property stolen, or taken or obtained by false pretenses, in any case in which the court before whom the person convicted would have been tried but for the provisions of this part, might by law order restitution. R. S. C. c. 176, s. 27.

804. Whenever any person is charged before any justice or justices of the peace, with any offence mentioned in section seven hundred and eighty-three, and in the opinion of such justice or justices the case is proper to be disposed of summarily by a magistrate, as herein provided, the justice or justices before whom such person is so charged may, if he or they see fit, remand such person for further examination before the nearest magistrate in like manner in all respects as a justice or justices are authorized to remand a person accused for trial at any court, under Part XLV., section five hundred and eighty-six; but no justice or justices of the peace, in any province, shall so remand any person for further examination or trial before any such magistrate in any other province. Any person so remanded for further examination before a magistrate in any city, may be examined and dealt with by any other magistrate in the same city. R. S. C. c. 176, ss. 28, 29 and 30.

805. If any person suffered to go at large, upon entering into such recognizance as the justice or justices are authorized, under Part XLV., section five hundred and eighty-seven, to take on the remand of a person accused, conditioned for his appearance before a magistrate, does not afterwards appear, pursuant to such recognizance, the magistrate before whom he should have appeared shall cer-

tify, under his hand on the back of the recognizance, to the clerk of the peace of the district, county or place, or other proper officer, as the case may be, the fact of such non-appearance, and such recognizance shall be proceeded upon in like manner as other recognizances; and such certificate shall be *primâ facie* evidence of such non-appearance without proof of the signature of the magistrate thereto. R. S. C. c. 176, s. 31.

806. Every fine and penalty imposed under the authority of this part shall be paid as follows, that is to say:—

(*a*) In the province of Ontario, to the magistrate who imposed the same, or to the clerk of the court or clerk of the peace, as the case may be, to be paid over by him to the county treasurer for county purposes;

(*b*) In any new district in the province of Quebec, to the sheriff of such district, as treasurer of the building and jury fund for such district, to form part of such fund,—and if in any other district in the said province, to the prothonotary of such district, to be applied by him, under the direction of the Lieutenant-Governor in council, towards the keeping in repair of the court-house in such district, or to be added by him to the moneys and fees collected by him for the erection of a court-house and gaol in such district, so long as such fees are collected to defray the cost of such erection;

(*c*) In the provinces of Nova Scotia and New Brunswick, to the county treasurer for county purposes; and

(*d*) In the provinces of Prince Edward Island, Manitoba and British Columbia, to the treasurer of the province. R. S. C. c. 176, s. 32.

807. Every conviction or certificate may be in the form QQ, RR, or SS in schedule one hereto applicable to the case, or to the like effect; and whenever the nature of the case requires it, such forms may be altered by omitting the words stating the consent of the person to be tried before the magistrate, and by adding the requisite words, stating the fine imposed, if any, and the imprisonment, if any, to which the person convicted is to be subjected if the fine is not sooner paid. R. S. C. c. 176, s. 33.

808. The provisions of this Act relating to preliminary inquiries before justices, except as mentioned in sections eight hundred and four and eight hundred and five, and of Part LVIII., shall not apply to any proceedings under this part. Nothing in this part shall affect the provisions of Part LVI., and this part shall not extend to persons punishable under that part so far as regards offences for which such persons may be punished thereunder. R. S. C. c. 176, ss. 34 and 35.

Part LVIII. of the Code relates to summary convictions and the foregoing section seems to mean that the sections of the Code extending from 839 to 909 shall not apply to this part.

FORMS UNDER PART LV

QQ—(*Section* 807.)

CONVICTION.

Canada,
Province of ,
County of ,

Be it remembered that on the day of in the year , at , A. B., being charged before me, the undersigned, of the said (*city*) (and consenting to my trying the charge summarily), is convicted before me, for that he, the said A. B. (*etc., stating the offence, and the time and place when and where committed*), and I adjudge the said A. B., for his said offence, to be imprisoned in the (and there kept to hard labour) for the term of .

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

J. S. (*Seal.*)
J. P. (*Name of county.*)

RR—(*Section* 807.)

CONVICTION UPON A PLEA OF GUILTY.

Canada,
Province of ,
County of ,

Be it remembered that on the day of in the year , at , A. B. being charged before me, the undersigned, of the said (*city*) (and consenting to my trying the charge summarily), for that he, the said A. B. (*etc., stating the offence, and the time and place when and where committed*), and pleading guilty to such charge, he is thereupon convicted before me of the said offence; and I adjudge him, the said A. B., for his said offence to be imprisoned in the (and there kept to hard labour) for the term of .

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

J. S. (*Seal.*)
J. P. (*Name of county.*)

SS—(*Section* 807.)

CERTIFICATE OF DISMISSAL.

Canada,
Province of ,
County of .

I, the undersigned, , of the city (*or as the case may be*) of , certify that on the day of , in the year , at aforesaid, A. B., being charged before me (and consenting to my trying the charge summarily), for that he, the said A. B., (*&c., stating the offence charged, and the time and place when and where alleged to have been committed*), I did, after having summarily tried the said charge, dismiss the same.

Given under my hand and seal, this day of , in the year , at aforesaid.

J. S. [SEAL.]

J. P. (*Name of county.*)

PART LVI.

TRIAL OF JUVENILE OFFENDERS FOR INDICTABLE OFFENCES.

809. In this part, unless the context otherwise requires,—

(*a*) The expression "two or more justices," or "the justices" includes,—

(i) in the provinces of Ontario and Manitoba any judge of the county court being a justice of the peace, police magistrate or stipendiary magistrate, or any two justices of the peace, acting within their respective jurisdictions;

(ii) in the province of Quebec any two or more justices of the peace, the sheriff of any district, except Montreal and Quebec, the deputy sheriff of Gaspé, and any recorder, judge of the Sessions of the Peace, police magistrate, district magistrate or stipendiary magistrate acting within the limits of their respective jurisdictions;

(iii) in the provinces of Nova Scotia, New Brunswick, Prince Edward Island, and British Columbia, and in the district of Keewatin, any functionary or tribunal invested by the proper legislative authority with power to do acts usually required to be done by two or more justices of the peace;

(iv) in the North-West Territories, any judge of the Supreme Court of the said territories, any two justices of the peace sitting together, and any functionary or tribunal having the powers of two justices of the peace;

(*b*) The expression "the common gaol or other place of confinement" includes any reformatory prison provided for the reception of juvenile offenders in the province in which the conviction referred to takes place, and to which, by the law of that province, the offender may be sent. R. S. C. c. 177, s. 2.

810. Every person charged with having committed, or having attempted to commit any offence which is theft, or punishable as theft, and whose age, at the period of the commission or attempted commission of such offence, does not, in the opinion of the justice before whom he is brought or appears, exceed the age of sixteen years, shall, upon conviction thereof in open court, upon his own confession or upon proof, before any two or more justices, be committed to the common gaol or other place of confinement within the jurisdiction of such justices, there to be imprisoned, with or without hard labour, for any term not exceeding three months, or, in the discretion of such justices, shall forfeit and pay such sum, not exceeding twenty dollars, as such justices adjudge. R. S. C. c. 177, s. 3.

Under s. 550 of the Code, the trials of all persons apparently under the age of sixteen years shall so far as it appears expedient

and practicable take place without publicity and separately and apart from that of other accused persons and at suitable times to be designated and appointed for that purpose.

In any case in which a person is convicted before any court of any offence punishable with not more than two year's imprisonment, and no previous conviction is proved against him, if it appears to the court before which he is so convicted, that, regard being had to the youth, character and antecedents of the offender, to the trivial nature of the offence, and to any extenuating circumstances under which the offence was committed, it is expedient that the offender be released on probation of good conduct, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a recognizance, with or without sureties, and during such period as the court directs, to appear and receive judgment when called upon, and in the meantime to keep the peace and be of good behaviour.

2. The court may, if it thinks fit, direct that the offender shall pay the costs of the prosecution, or some portion of the same, within such period and by such instalments as the court directs. 52 V. c. 44, s. 2. Code, s. 971.

The court, before directing the release of an offender under the next preceding section, shall be satisfied that the offender or his surety has a fixed place of abode or regular occupation in the county or place for which the court acts, or in which the offender is likely to live during the period named for the observance of the conditions. 52 V. c. 44, s. 4. Code, s. 972.

If a court having power to deal with such offender in respect to his original offence or any justice of the peace is satisfied by information on oath that the offender has failed to observe any of the conditions of his recognizance, such court or justice of the peace may issue a warrant for his apprehension.

2. An offender, when apprehended on any such warrant, shall, if not brought forthwith before the court having power to sentence him, be brought before the justice issuing such warrant or before some other justice in and for the same territorial division, and such justice shall either remand him by warrant until the time at

which he was required by his recognizance to appear for judgment, or until the sitting of a court having power to deal with his original offence, or admit him to bail (with a sufficient surety) conditioned on his appearing for judgment.

3. The offender when so remanded may be committed to a prison, either for the county or place in or for which the justice remanding him acts, or for the county or place where he is bound to appear for judgment; and the warrant of remand shall order that he be brought before the court before which he was bound to appear for judgment, or to answer as to his conduct since his release. 52 V. c. 44, s. 3. Code, s. 973.

In the three next preceding sections the expression "court" means and includes any superior court of criminal jurisdiction, any "judge" or court within the meaning of Part LV., and any "magistrate" within the meaning of Part LVI. of this Act. 52 V. c. 44, s. 1. Code, s. 974.

811. Whenever any person, whose age is alleged not to exceed sixteen years, is charged with any offence mentioned in the next preceding section, on the oath of a credible witness, before any justice of the peace, such justice may issue his summons or warrant, to summon or to apprehend the person so charged, to appear before any two justices of the peace, at a time and place to be named in such summons or warrant. R. S. C. c. 177, s. 4.

812. Any justice of the peace, if he thinks fit, may remand for further examination or for trial, or suffer to go at large, upon his finding sufficient sureties, any such person charged before him with any such offence as aforesaid.

2. Every such surety shall be bound by recognizance conditioned for the appearance of such person before the same or some other justice or justices of the peace for further examination, or for trial before two or more justices of the peace as aforesaid, or for trial by indictment at the proper court of criminal jurisdiction, as the case may be.

3. Every such recognizance may be enlarged, from time to time, by any such justice or justices to such further time as he or they appoint; and every such recognizance not so enlarged shall be discharged without fee or reward, when the person has appeared according to the condition thereof. R. S. C. c. 177, ss. 5, 6 and 7.

813. The justices before whom any person is charged and proceeded against under the provision of this part before such person is asked whether he has any cause to show why he should not be convicted, shall say to the person so charged, these words, or words to the like effect:

"We shall have to hear what you wish to say in answer to the charge against you; but if you wish to be tried by a jury, you must object now to our deciding upon it at once."

2. And if such person or a parent or guardian of such person, then objects, no further proceedings shall be had under the provisions of this part; but the justices may deal with the case according to the provision set out in Parts XLIV. and XLV., as if the accused were before them thereunder. R. S. C. c. 177. s. 8.

814 If the justices are of opinion, before the person charged has made his defence, that the charge is, from any circumstance, a fit subject for prosecution by indictment, or if the person charged, upon being called upon to answer the charge, objects to the case being summarily disposed of under the provisions of this part, the justices shall not deal with it summarily, but may proceed to hold a preliminary inquiry as provided in Parts XLIV. and XLV.

2. In case the accused has elected to be tried by a jury, the justices shall state in the warrant of commitment the fact of such election having been made. R. S. C. c. 177, s. 9.

Parts XLIV. and XLV., ss. 553 and 577 of the Code respectively relate to compelling the appearance of the accused and the procedure on appearance in indictable cases.

815. Any justice of the peace may, by summons, require the attendance of any person as a witness upon the hearing of any case before two justices, under the authority of this part, at a time and place to be named in such summons. R. S. C. c. 177, s. 10.

816. Any such justice may require and bind by recognizance every person whom he considers necessary to be examined, touching the matter of such charge, to attend at the time and place appointed by him and then and there to give evidence upon the hearing of such charge. R. S. C. c. 177, s. 11.

817. If any person so summoned or required or bound, as aforesaid, neglects or refuses to attend in pursuance of such summons or recognizance, and if proof is given of such person having been duly summoned, as hereinafter mentioned, or bound by recognizance, as aforesaid, either of the justices before whom any such person should have attended, may issue a warrant to compel his appearance as a witness. R. S. C. c. 177, s. 12.

818. Every summons issued under the authority of this part may be served by delivering a copy thereof to the person, or to some inmate, apparently over sixteen years of age, at such person's usual place of abode, and every person so required by any writing under the hand or hands of any justice or justices to attend and give evidence as aforesaid, shall be deemed to have been duly summoned. R. S. C. c. 177, s. 13.

See *ante*, p. 57.

819. If the justices upon the hearing of any such case deem the offence not proved, or that it is not expedient to inflict any punishment, they shall dismiss the person charged,—in the latter case on his finding sureties for his future good behaviour, and in the former case without sureties, and then make out and deliver to the person charged a certificate in the form TT in schedule one to this Act, or to the like effect, under the hands of such justices, stating the fact of such dismissal. R. S. C. c. 177, s. 14.

820. The justices before whom any person is summarily convicted of any offence hereinbefore mentioned, may cause the conviction to be drawn up in the form UU in schedule one hereto, or in any other form to the same effect, and the conviction shall be good and effectual to all intents and purposes.

2. No such conviction shall be quashed for want of form, or be removed by *certiorari* or otherwise into any court of record; and no warrant of commitment shall be held void by reason of any defect therein, if it is therein alleged that the person has been convicted, and there is a good and valid conviction to sustain the same. R. S. C. c. 177, ss. 16 and 17.

821. Every person who obtains such certificate of dismissal, or is so convicted, shall be released from all further or other criminal proceedings for the same cause. R. S. C. c. 177, s. 15.

822. The justices before whom any person is convicted under the provisions of this part shall forthwith transmit the conviction and recognizances to the clerk of the peace or other proper officer, for the district, city, county or union of counties wherein the offence was committed, there to be kept by the proper officer among the records of the court of general or quarter sessions of the peace, or of any other court discharging the functions of a court of general or quarter sessions of the Peace. R. S. C. c. 177, s. 18.

823. Every clerk of the peace, or other proper officer, shall transmit to the Minister of Agriculture a quarterly return of the names, offences and punishments mentioned in the convictions, with such other particulars as are, from time to time required. R. S. C. c. 177, s. 19.

824. No conviction under the authority of this part shall be attended with any forfeiture, except such penalty as is imposed by the sentence; but whenever any person is adjudged guilty under the provisions of this part, the presiding justice may order restitution of property in respect of which the offence was committed, to the owner thereof or his representatives.

2. If such property is not then forthcoming, the justices, whether they award punishment or not, may inquire into and ascertain the value thereof in money; and, if they think proper, order payment of such sum of money to the true owner, by the person convicted, either at one time or by instalments, at such periods as the justices deem reasonable.

3. The person ordered to pay such sum may be sued for the same as a debt in any court in which debts of the like amount are, by law, recoverable, with costs of suit, according to the practice of such court. R. S. C. c. 177, ss. 20, 21 and 22.

See s. 832 to 838 of the Code.

825. Whenever the justices adjudge any offender to forfeit and pay a pecuniary penalty under the authority of this part, and such penalty is not forthwith paid they may, if they deem it expedient, appoint some future day for the payment thereof, and order the offender to be detained in safe custody until the day so appointed, unless such offender gives security to the satisfaction of the justices, for his appearance on such day; and the justice may take such security by way of recognizance or otherwise in their discretion.

2. If at any time so appointed such penalty has not been paid, the same or any other justices of the peace may, by warrant under their hands and seals, commit the offender to the common gaol or other place of confinement within their jurisdiction, there to remain for any time not exceeding three months, reckoned from the day of such adjudication. R. S. C. c. 177, ss. 23 and 24.

See as to giving time, *ante*, pp. 22-23.

826. The justices before whom any person is prosecuted or tried for any offence cognizable under this part may, in their discretion, at the request of the prosecutor or of any other person who appears on recognizance or summons to prosecute or give evidence against such person, order payment to the prosecutor and witnesses for the prosecution, of such sums as to them seem reasonable and sufficient, to reimburse such prosecutor and witnesses for the expenses they have severally incurred in attending before them, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein,—and may order payment to the constables and other peace officers for the apprehension and detention of any person so charged.

2. The justices may, although no conviction takes place, order all or any of the payments aforesaid to be made, when they are of opinion that the persons, or any of them, have acted in good faith. R. S. C. c. 177, ss. 25 and 26.

See also s. 828.

827. Every fine imposed under the authority of this part shall be paid and applied as follows, that is to say:—

(*a*) In the Province of Ontario to the justices who impose the same or the clerk of the county court, or the clerk of the peace, or other proper officer, as the case may be, to be by him or them paid over to the county treasurer for county purposes;

(*b*) In any new district in the Province of Quebec to the sheriff of such district as treasurer of the building and jury fund for such district to form part of such fund, and in any other district in the Province of Quebec to the prothonotary of such district, to be applied by him, under the direction of the Lieutenant-Governor in Council, towards the keeping in repair of the court-house in such district or to be added by him to the moneys or fees collected by him for the erection of a court-house or gaol in such district, so long as such fees are collected to defray the cost of such erection;

(*c*) In the Provinces of Nova Scotia and New Brunswick to the county treasurer, for county purposes; and

(*d*) In the Provinces of Prince Edward Island, Manitoba and British Columbia to the treasurer of the province. R. S. C. c. 177, s. 27.

828. The amount of expenses of attending before the justices and the compensation for trouble and loss of time therein, and the allowances to the constables and other peace officers for the apprehension and detention of the offender, and the allowances to be paid to the prosecutor, witnesses and constables for attending at the trial or examination of the offender, shall be ascertained by and certified under the hands of such justices; but the amount of the costs, charges and expenses attending any such prosecution, to be allowed and paid as aforesaid, shall not in any one case exceed the sum of eight dollars.

2. Every such order of payment to any prosecutor or other person, after the amount thereof has been certified by the proper justices of the peace as aforesaid, shall be forthwith made out and delivered by the said justices or one of them, or by the clerk of the peace or other proper officer, as the case may be, to such prosecutor or other person, upon such clerk or officer being paid his lawful fee for the same, and shall be made upon the officer to whom fines imposed under the authority of this part are required to be paid over in the district, city, county, or union of counties in which the offence was committed, or was supposed to have been committed, who, upon sight of every such order, shall forthwith pay to the person named therein or to any other person duly authorized to receive the same on his behalf, out of any moneys received by him under this part, the money in such order mentioned, and he shall be allowed the same in his accounts of such moneys. R. S. C. c. 177, ss. 28 and 29.

829. The provisions of this part shall not apply to any offence committed in the provinces of Prince Edward Island or British Columbia, or the district of Keewatin, punishable by imprisonment for two years and upwards; and in such provinces and district it shall not be necessary to transmit any recognizance to the clerk of the peace or other proper officer. R. S. C. c. 177, s. 30.

830. The provisions of this part shall not authorize two or more justices of the peace to sentence offenders to imprisonment in a reformatory in the province of Ontario. R. S. C. c. 177, s. 31.

831. Nothing in this part shall prevent the summary conviction of any person who may be tried thereunder before one or more justices of the peace, for any offence for which he is liable to be so convicted under any other part of this Act or under any other Act. R. S. C. c. 177, s. 8, part.

FORMS UNDER PART LVI.

TT—(*Section* 819.)

CERTIFICATE OF DISMISSAL.

Canada, Province of , County of . } , justices of the peace for the of , (*or if a recorder, &c.*, I, a , of the of , *as the case may be*), do hereby certify that on the day of , in the year at , in the said of , A. B. was brought before us, the said justices (*or* me, the said), charged with the following offence, that is to say (*here state briefly the particulars of the charge*), and that we, the said justices, (*or* I, the said) thereupon dismissed the said charge.

Given under our hands and seals (*or* my hand and seal) this day of , in the year , at aforesaid.

J. P. [SEAL.]
J. R. [SEAL.]
or S. J. [SEAL.]

UU—(*Section* 820.)

CONVICTION.

Canada, Province of , County of , }

Be it remembered that on the day of , in the year , at , in the county of , A. B. is convicted before us, J. P. and J. R., justices of the peace for the said county (*or* me, S. J., *recorder*, of the , of , *or as the case may be*) for that he, the said A. B., did (*specify the offence and the time and place when and where the same was committed, as the case may be, but without setting forth the evidence*), and we, the said J. P. and J. R. (*or* I, the said S. J.), adjudge the said A. B., for his said offence, to be imprisoned in the (*or* to be imprisoned in the , and there kept at hard labour), for the space of , (*or* we) (*or* I) adjudge the said A. B., for his said offence, to forfeit and pay (*here state the penalty actually imposed*), and in default of immediate payment of the said sum, to be imprisoned in the (*or* to be imprisoned in the and kept at hard labour) for the term of , unless the said sum is sooner paid.

Given under our hands and seals (*or* my hand and seal), the day and year first above mentioned.

J. P. [SEAL.]
J. R. [SEAL.]
or S. J. [SEAL.]

PART LVIII.

SUMMARY CONVICTIONS.

839. In this part, unless the context otherwise requires—

(*a*) the expression "justice" means a justice of the peace and includes two or more justices if two or more justices act or have jurisdiction, and also a police magistrate, a stipendiary magistrate and any person having the power or authority of two or more justices of the peace;

(*b*) the expression "clerk of the peace" includes the proper officer of the court having jurisdiction in appeal under this part, as provided by section eight hundred and seventy-nine;

(*c*) the expression "territorial division" means district, county, union of counties, township, city, town, parish or other judicial division or place;

(*d*) the expression "district" or "county" includes any territorial or judicial division or place in and for which there is such judge, justice, justice's court, officer or prison as is mentioned in the context;

(*e*) the expression "common gaol" or "prison" means any place other than a penitentiary in which persons charged with offences are usually kept and detained in custody. R. S. C. c. 178, s. 2.

Although the Code takes effect on 1st July, 1893, the proceedings in respect of any prosecution commenced before the said day under The Summary Convictions Act shall be continued and carried on as if the Code had not been passed. See s-s. 2 of s. 981 as amended by 56 V. c. 32.

In certain cases where the consequences of an act have not been serious, a magistrate has a discretion to dispose of the matter summarily instead of committing the offender for trial. Thus under s. 486 of the Code, it is an indictable offence for any one by such negligence as shows him to be reckless or wantonly regardless of consequences, to set fire to any forest, tree, lumber, etc., so that the same is injured or destroyed, but the magistrate on preliminary investigation, if the above circumstances concur, may impose a fine not exceeding fifty dollars instead of sending the offender for trial. So under the "Wrecks and Salvage Act," R. S. C. c. 81, s. 41, a person concealing wreck may, in the discretion of the justices, be fined on summary proceedings or may be committed for trial.

A magistrate acting under that part of the Code relating to the summary trial of indictable offences may, under certain circumstances, decide not to proceed summarily. See s. 791. So also on the trial of juvenile offenders. S. 814, or of assaults, s. 864.

840. Subject to any special provision otherwise enacted with respect to such offence, act or matter, this part shall apply to—

(*a*) every case in which any person commits, or is suspected of having committed, any offence or act over which the Parliament of Canada has legislative authority, and for which such person is liable, on summary conviction, to imprisonment, fine, penalty or other punishment;

(*b*) every case in which a complaint is made to any justice in relation to any matter over which the Parliament of Canada has legislative authority, and with respect to which such justice has authority by law to make any order for the payment of money or otherwise. R. S. C. c. 178, s. 3.

Shortly stated, the effect of the foregoing section is that the provisions of this part apply to all convictions or orders so far as the authority of the Parliament of Canada extends.

841. In the case of any offence punishable on summary conviction if no time is specially limited for making any complaint, or laying any information in the Act or law relating to the particular case, the complaint shall be made, or the information shall be laid within six months from the time when the matter of complaint or information arose, except in the North-west Territories, where the time within which such complaint may be made, or such information may be laid, shall be extended to twelve months from the time when the matter of the complaint or information arose. 52 V. c. 45, s. 5.

The time limited by the former statute was three months. See s. 551 of the Code as to special limitations in particular cases.

The meaning of the words "when the matter of complaint or information arose" in this section, is that proceedings shall be taken within six months from the time when the liability or default of the defendant was complete, and the remedy given by the statute was capable of being enforced against him. Labalmondiere v. Addison, 1 El. & El. 41.

The time counts from the matter which gives rise to the real offence or cause of proceeding. Hill v. Thorncroft, 3 E. & E. 257; and when it is complete, Jacomb v. Dodgson, 27 J. P. 68. The word "months" in this section means calendar months. R. S. C. c. 1, s. 7 (25.)

In the computation of time the same rule applies to criminal as to civil cases. A statute provided that complaint should be made "within one calendar month after the cause of such complaint shall arise." On June 30 an information was laid against the appellant in respect of an act of cruelty alleged to have been committed by him on May 30, and the court held that the day on which the alleged offence was committed was to be excluded from the computation of the calendar month within which the complaint was to be made and that the complaint was therefore made in time. Radcliffe v. Bartholomew, L. R. 1 Q. B. 161 (1892). See also *ante*, p. 18.

842. Every complaint and information shall be heard, tried, determined and adjudged by one justice or two or more justices as directed by the Act or law upon which the complaint or information is framed or by any other Act or law in that behalf.

2. If there is no such direction in any Act or law then the complaint or information may be heard, tried, determined and adjudged by any one justice for the territorial division where the matter of the complaint or information arose: Provided that every one who aids, abets, counsels or procures the commission of any offence punishable on summary conviction, may be proceeded against and convicted either in the territorial division or place where the principal offender may be convicted, or in that in which the offence of aiding, abetting, counselling or procuring was committed.

3. Any one justice may receive the information or complaint, and grant a summons or warrant thereon, and issue his summons or warrant to compel the attendance of any witnesses for either party, and do all other acts and matters necessary preliminary to the hearing, even if by the statute in that behalf it is provided that the information or complaint shall be heard and determined by two or more justices.

4. After a case has been heard and determined one justice may issue all warrants of distress or commitment thereon.

5. It shall not be necessary for the justice who acts before or after the hearing to be the justice or one of the justices by whom the case is to be or was heard and determined.

6. If it is required by any Act or law that an information or complaint shall be heard and determined by two or more justices, or that a conviction or order shall be made by two or more justices, such justices shall be present and acting together during the whole of the hearing and determination of the case.

8. No justice shall hear and determine any case of assault or battery, in which any question arises as to the title to any lands, tenements, hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or

any execution under the process of any court of justice. R. S. C. c. 178, ss. 4, 5, 6, 7, 8, 9, 12 and 73.

The determination of the information or complaint includes the conviction of the offender, and when an Act requires the conviction to be before two justices a conviction by one only will be bad. McGilvery v. Gault, 1 Pugs. & Bur. 641. See *ante*, p. 9.

Under s-s. 3 one justice may issue a summons for an offence which must be tried by a police magistrate or two justices. The defendant was convicted before the police magistrate of Toronto for an offence against the "Liquor License Act" on the 1st September, 1887. The information was laid on the 4th August, 1887, before a single justice of the peace acting at the request of the police magistrate, who issued a summons on which the defendant appeared on the 11th and 18th August, being then remanded by two justices of the peace. The police magistrate was absent when the information was laid and up to the 25th August. Though the offence is one which can only be tried by two justices or a police magistrate the conviction by the latter was held legal under the circumstances. R. v. Gordon, 16 O. R. 64.

And it would seem that this sub-section would authorize a remand by one justice even in cases where two must convict. R. v. Menary, 19 O. R. 691.

An information to be tried before two justices of the peace is good though only signed by one. Falconbridge q.t. v. Tourangeau, Rob. Dig. 260; s-s. 3.

Under this statute, one justice may receive the complaint and grant the summons, even where the information and complaint must be heard and determined by two or more justices. R. v. Simmons, 1 Pugsley, 158.

The special authority given to justices must be exactly pursued according to the letter of the Act by which it is created, or their acts will not be good.

When two justices of the peace are appointed by statute to adjudicate upon complaints, more or less than two does not meet the requirement. R. v. Lougee, 10 C. L. J. N. S. 135.

And where a statute empowers two justices of the peace to convict, a conviction by one only is not sufficient. *Re* Crow, 1 U. C. L. J. N. S. 302.

An information under "The Canada Temperance Act," can be laid before one justice, although two must try the case as the procedure is directed to be according to this Act. R. v. Klemp, 10 O. R. 143.

If one justice make a conviction where, by statute, two are required to convict, he is liable in trespass. Graham v. McArthur, 25 Q. B. (Ont.) 478.

When the statute under which the information is laid or the complaint made, requires expressly that it shall be laid or made before two justices, this section does not apply. R. v. Griffin, 9 Q. B. 155; R. v. Russell, 13 Q. B. 237.

In a case heard before three justices of the peace, judgment may be rendered by two, where, by the statute, one justice might have heard and determined the case. *Ex parte* Trowley, 9 L. C. J. 169.

Where a case is heard before two justices of the peace, and taken *en delibere*, it is incompetent for one justice to render judgment alone. *Ex parte* Brodeur, 2 L. C. J. 97. See also St. Gemmes v. Cherrier, 9 L. C. J. 22.

Where authority is given to two justices to do a judicial act, they must be together at the time they do it, in order that they may consult together upon the judgment. Penny v. Slade, 5 Bing. N. C. 319. See also s-s. 6.

In regard to the number of justices required, the provisions of the particular law on which proceedings are instituted must be observed. In the absence of any direction in the Act or law upon which the complaint or information is framed, one justice is sufficient. Code, s. 842. Where two justices are required they must be present and acting together during the whole of the hearing and determination of the case. Code, s. 842, s-s. 6. See also R. S. C. c. 1, s. 7 (35). Certain persons, such as the recorder, police or stipendiary magistrate, have the power of two justices of the peace, and may do alone whatever the Act authorizes two justices to do. See Code, s. 541; R. S. O. c. 72, s 21.

When justices are called upon to do an act within their jurisdiction, and they do it, they are *functi officio* with respect to that act, and cannot treat it as a nullity and do it over again, nor can any other justice do so; it must be quashed first either on appeal or upon *certiorari* before they or others again exercise their jurisdiction in respect of it.

After a case has been heard and determined, one justice may issue all warrants of distress or commitment thereon, and it is not necessary that the magistrate who convicts should also issue the warrant of distress or commitment under this section. The warrant of commitment should however, shew before whom the conviction was had. *Re* Crow, 1 U. C. L. J. N. S. 302.

Section 885 of the Code shows the right of "any other justice for the same territorial division" to issue a warrant of distress or commitment.

A case may be returned before one magistrate and adjourned from day to day by one or more, and the trial and conviction may be before a different magistrate, the jurisdiction not belonging exclusively to the one first having cognizance of it. *Ex parte* Carignan, 5 L. C. R. 479; see also R. v. Milne, 25 C. P. (Ont.) 94.

843. The provisions of Parts XLIV. and XLV. of this Act relating to compelling the appearance of the accused before the justice receiving an information under section five hundred and fifty-eight and the provisions respecting the attendance of witnesses on a preliminary inquiry and the taking of evidence thereon, shall, so far as the same are applicable, except as varied by the sections immediately following, apply to any hearing under the provisions of this part: Provided that whenever a warrant is issued in the first instance against a person charged with an offence punishable under the provisions of this part, the justice issuing it shall furnish a copy or copies thereof, and cause a copy to be served on the person arrested at the time of such arrest.

2. Nothing herein contained shall oblige any justice to issue any summons to procure the attendance of a person charged with an offence by information laid before such justice whenever the application for any order may, by law, be made *ex parte*. R. S. C. c. 178, ss. 13 to 17 and 21.

Under section 32 of the Code it is the duty of every one executing any process or warrant to have it with him and to produce it if required. It is also the duty of every one arresting another, whether with or without warrant, to give notice, where practicable,

of the process or warrant under which he acts, or of the cause of arrest. Code, s. 32, s-s. 2.

Section 18 of the former Act had a similar provision as to the service of a copy of the warrant. It was held in New Brunswick that this section was directory only, and that it was no ground for quashing a conviction that a copy of the warrant was not served at the time of arrest. The matter is one of procedure and does not go to the magistrate's jurisdiction where the defendant appears and does not claim to be prejudiced or ask for further time. *Ex parte* Lutz, 27 S. C. N. B. 491.

The mode adopted for bringing the defendant before the justice is not a ground for quashing the conviction. If, for instance, he is arrested, instead of being summoned. But, in a prosecution, under the R. S. O. c. 194, s. 49, for selling liquor without a license, it seems it is not improper to arrest instead of merely summoning the defendant. R. v. Menary, 19 O. R. 691; R. S. O. c. 74, s. 1.

It seems that the summons should on its face show the authority of the magistrate issuing it to act. In the Province of Quebec a defendant had been convicted of selling liquor without license. In the absence of Mr. Coursol, Mr. Brehaut had presided. The usual form of words in the summons, requiring the defendant to be and appear before "C. J. Coursol, Esq.," and stating under what authority, had been struck out, and the words "M. Brehaut, P.M." substituted. On the return of the summons, the defendant pleaded to the jurisdiction, and on this being overruled he pleaded to the merits. The court held that the plea to the jurisdiction was not a waiver of the plea to the merits, and they quashed the conviction. Durnford v. Faireau, 3 L. C. L. J. 19. But if the defendant had made a motion instead of pleading to the jurisdiction, the subsequent plea to the merits would be a waiver of the objection to the jurisdiction. Durnford v. St. Marie, 3 L C. L. J. 19.

844. The provisions of section five hundred and sixty-five relating to the endorsement of warrants shall apply to the case of any warrant issued under the provisions of this part against the accused, whether before or after conviction, and whether for the apprehension or imprisonment of any such person. R. S. C. c. 178, s. 22; 52 V. c. 45, s. 4.

Where a conviction is made in one county and warrant of commitment issued thereon, there is no power to back the warrant of commitment in another county for the purpose of arresting the defendant. Jones v. Grace, 17 O. R. 681.

The backing of a warrant is a purely ministerial act and the justice who issues it, is responsible for an arrest under it, though the warrant is backed by another justice and executed in another county. *Ib.*

845. It shall not be necessary that any complaint upon which a justice may make an order for the payment of money or otherwise shall be in writing, unless it is so required by some particular Act or law upon which such complaint is founded.

2. Every complaint upon which a justice is authorized by law to make an order, and every information for any offence or act punishable on summary conviction, may, unless it is herein or by some particular Act or law otherwise provided, be made or had without any oath or affirmation as to the truth thereof.

3. Every complaint shall be for one matter of complaint only, and not for two or more matters of complaint, and every information shall be for one offence only, and not for two or more offences; and every complaint or information may be laid or made by the complainant or informant in person, or by his counsel or attorney or other person authorized in that behalf. R. S. C. c. 178, ss. 23, 24 and 26.

All informations even in cases of summary conviction must be in writing and under oath. See Code, ss. 558 and 843. But for the express provisions of the statute this would not be necessary Basten v. Carew, 3 B. & C. 649; Friel v. Ferguson, 15 C. P. (Ont.) 594; *Re* Conklin, 31 Q. B. (Ont.) 168.

The Fisheries Act, R. S. C. c. 95, s. 19, provides that the penalties and forfeitures imposed by the Act may be recovered by parol complaint. As to s-s. 2 of this 845th section see *ex parte* Cousine, 7 L. C. J. 112; R. v. McConnell, 6 O. S. 629.

The word "herein" used in any section of an Act is to be understood to relate to the whole Act and not to that section only. R. S. C. c. 1, s. 7 (5).

The words in this section "order for the payment of money or otherwise" include orders of every kind which a justice of the peace has authority to make, and orders other than those for the pay-

ment of money. Morant v. Taylor, L. R. 1 Ex. D. 188. The rule as to words *ejusdem generis* does not apply here or limit the effect of the words "or otherwise." *Ib.*

The law requires that the summons be issued by the justice before whom the information or complaint is laid, and the court disapproves of the practice of the complaint being heard by the magistrate's clerk who fills up a summons and obtains the signature of any magistrate thereto, whether the information or complaint is made to him or not. Only the magistrate who hears the complaint should issue the summons. Dixon v. Wells, 25 Q. B. D. 249.

It is no objection to a conviction that the complainant was not sworn till after the information to obtain a warrant was filled up and written out by the magistrate, nor does it make any difference that the information was laid by the constable who afterwards arrested the defendant. *Ex parte* Balser, 27 S. C. N. B. 40.

The 907th section of the Code does not extend to complaints but in reference to informations, its provisions must be kept in view. An information which includes the three distinct offences of keeping for sale, selling and bartering intoxicating liquors which are prohibited by s. 99 of "The Canada Temperance Act," contravenes s-s. 3 of s. 845. R. v. Bennett, 1 O. R. 445. But such an information may be amended by striking out all the offences charged, except one, and such an amendment may be made after the case has been closed and reserved for decision. *Ib.* See also R. v. Walsh, 2 O. R. 206; R. v. Klemp, 10 O. R. 143.

Under this 3rd sub-section the offence may be laid as having been committed on divers days and times between two dates. Onley v. Gee, 30 L. J. M. C. 222. And it does not prevent a principal and an aider or abettor from being charged in the same information. The provision that every information shall be for one offence only, does not refer to the number of offenders, and it seems to be quite legal to include several persons in one information or complaint (and conviction or order) when they are all charged with the same offence or matter, committed at the same time and place. R. v. Bacon, 21 J. P. 404; R. v. Cridland, 7 E. & B. 853. See also *ex parte* Cariguan, 5 L. C. R. 479.

A complaint can only have reference to one matter, and not to two or more, and an information to but one offence; not to two or more unless the law under which the one or the other is made permit it. Pacaud v. Roy, 15 L. C. R. 205.

An information laid before a police magistrate charged that the defendant did on the 30th and 31st days of July, 1892, sell intoxicating liquor without the license therefor by law required. Upon the hearing, evidence was adduced to show that the defendant had sold intoxicating liquor on these days, and the magistrate adjudged the defendant guilty and made a minute thereof and of the punishment imposed. A few days afterwards he returned a conviction of the defendant for having sold liquor without a license on the two days named; and a month later returned a second conviction as for an offence committed on the 31st July only. It was held that the information charged two offences, and it, and the proceedings thereon, were in direct contravention of section 845 (3) of the Code, and that the misjoinder of the two offences was not a "defect in substance" within the meaning of section 847, neither was the objection cured by sections 883, 889 or 890 of the Code, or section 105 of the R. S. O. c. 194. The court also held that the fact that the defendant did not take any objection to the information or subsequent proceedings before the magistrate, did not prevent him from objecting on the return to a *certiorari* that the information and proceedings thereon were not warranted in law. R. v. Hazen, 23 O. R. 387. In this case the court declined to follow Rogers v. Richards, L. R. 1 Q. B. 555 (1892), which they declared to be inconsistent with Hamilton v. Walker, L. R. 2 Q. B. 25 (1892). In the latter case the court held that when two separate charges are laid against a defendant, the magistrate cannot hear the first charge, reserve judgment, and then proceed to hear the second, and convict on both charges. Each case ought to be decided on the evidence given with relation to the particular charge, and if the justices hear the evidence on the second information before deciding the first, both convictions will be bad even though the case is not within the letter of the law as to the trial of second offences.

A clear distinction exists between informations and complaints. It is called an information where it is for an offence punishable on summary conviction, a complaint where it is sought to obtain an order merely. A similar distinction exists between *convictions* and *orders*, the former following an information and the latter following a complaint. See Morant v. Taylor, L. R. 1 Ex. D. 188. See ss. 840, 858, 859, 872.

The information should contain the name, address, and occupation of the informer; the date and place of taking, and description of the justice receiving it; the name of the accused or a full description if the name is not known—see Code, s. 563, s-s. 3, which requires the warrant to name, or otherwise describe, the offender; see however Code, s. 846—the date and place of the commission of the offence, shewing the jurisdiction of the justice; but stating the place in the margin of the information is sufficient, and it need not be set out in the body. See Code, s. 3 (*l*), and s. 609. R. v. Cavanagh, 27 C. P. (Ont.) 537. See however the form FF in the schedule.

The charge must be set out in such distinct terms that the accused may know exactly what he has to answer, for the accused cannot be convicted of a different offence from that contained in the information. Martin v. Pridgeon, 28 L. J. M. C. 179; *ex parte* Hogue, 3 L. C. R. 94.

There must also be an allegation of any particular matters necessary to bring the accused under the scope of the Act or law on which the proceedings are founded, *i. e.* when any particular description of person is mentioned in the Act, the accused must be described as such person, and when such words as "maliciously," "knowingly," etc., are used, the offence must be described as having been so committed. In stating the offence in the summons, or warrant, the nearer the exact words of the statute are followed the better. *Ex parte* Perham, 5 H. & N. 30. If the proceeding is on a second offence the previous conviction should be mentioned.

Certainty and precision are required in the statement and description of an offence under a penal statute, and an information charging several offences in the disjunctive, is bad, though the words of the statute are copied in the information, the statute

relating to several offences in the disjunctive. *Ex parte* Hogue, 3 L. C. R. 94. The confession of the defendant to an information defective in the above particulars will not aid or cure the defect.

The 907th section of the Code provides that no information, summons, conviction, order or other proceeding shall be held to charge two offences, or shall be held to be uncertain on account of its stating the offence to have been committed in different modes. But independently of this provision an information charging an offence in the alternative, is bad. Therefore, where the information charged the defendant with selling beer *or* ale without a license, the court held that it was bad, both in matter and substance, and could not be made out by evidence nor helped by intendment. R. v. North, 6 D. & R. 143; R. v. Jukes, 8 T. R. 536.

Where a prosecutor is not obliged to negative the exceptions in a statute, and negatives some of them only, that part of the information will be rejected as surplusage. R. v. Hall, 1 T. R. 320.

But an information founded on a penal statute must negative the exceptions in the enacting clause creating the penalty, and also those contained in a former clause, to which the enacting clause refers in express terms. R. v. Pratten, 6 T. R. 559; see R. v. Breen, 36 Q. B. (Ont.) 84. See Code, s. 852.

An information against A. will not justify the issue of a warrant for the arrest of B. Where an information was laid against A. the keeper of a disorderly house, and the prayer in the information was for the arrest of A., and all others found or concerned in the house, it was held that this information did not authorize a warrant for the arrest of a person found in the house, but against whom the information was not laid otherwise than in the prayer as above. Cleland v. Robinson, 11 C. P. (Ont.) 416.

If a statute gives summary proceedings for various offences specified in several sections, an information is bad which leaves it uncertain under which section it took place. And where a statute creates several offences, one of which is charged in an information, a conviction of another offence, the subject of the same penalty will be bad. Thompson v. Durnford, 12 L. C. J. 285-7.

Where two or more persons may commit an offence under an Act, the information may be jointly laid against them. R. v. Littlechild, L. R. 6 Q. B. 295. But where the penalty is imposed on each person, it is wrong to convict them jointly, even when they are charged in a joint information, and in such case there may be separate convictions, *Ib.* But under s. 860 of the Code, when each joint offender is adjudged to forfeit a sum equivalent to the value of the property, no further sum shall be paid to the party aggrieved than the amount forfeited by one of such offenders only; and the corresponding sum forfeited by the other offender shall be applied in the same manner as other penalties are directed to be applied.

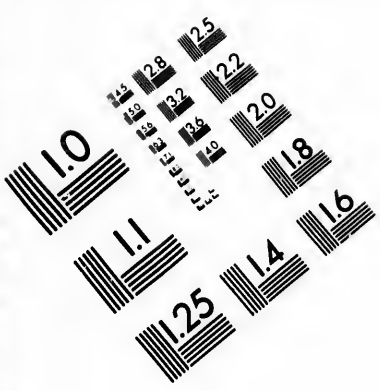
A sufficient information by a competent person relating to a matter within the magistrate's cognizance, gives him jurisdiction irrespective of the truth of the facts contained in it. His authority to act does not depend upon the veracity or falsehood of the statements, or upon the evidence being sufficient or insufficient to establish the *corpus delicti* brought under investigation, and he will be protected, although the information may disclose no legal evidence, or purport to be founded upon inadmissible evidence, or upon mixed allegations of law and fact. Cave v. Mountain, 1 M. & G. 257, 264.

But the information cannot be rendered valid by the evidence offered in support of it, for the office of the evidence is to prove, not to supply, a legal charge. R. v. Wheatman, Doug. 435; Wiles v. Cooper, 3 A. & E. 524.

The laying of the information is the commencement of a prosecution before a magistrate. R. v. Lennox, 34 Q. B. (Ont.) 28. See *ante*, p. 18; see also Code, s. 551.

If when the information is sworn to, a blank is left for the defendant's christian name, and this blank is afterwards filled up by the justice, the information will be void, and the justice will have no right to issue a warrant thereon, and any warrant issued thereon will be void. Garrison v. Harding, 1 Pugsley, 166.

An information is unnecessary where the justices have power to convict on view as by 8 Hen. VI. c. 9, for forcible detainers, and 19 Geo. II. c. 21, s. 2, against profane swearing. R. v. Jones, 12



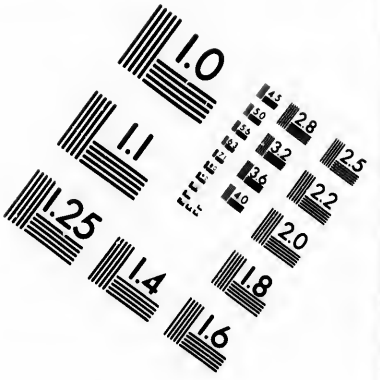
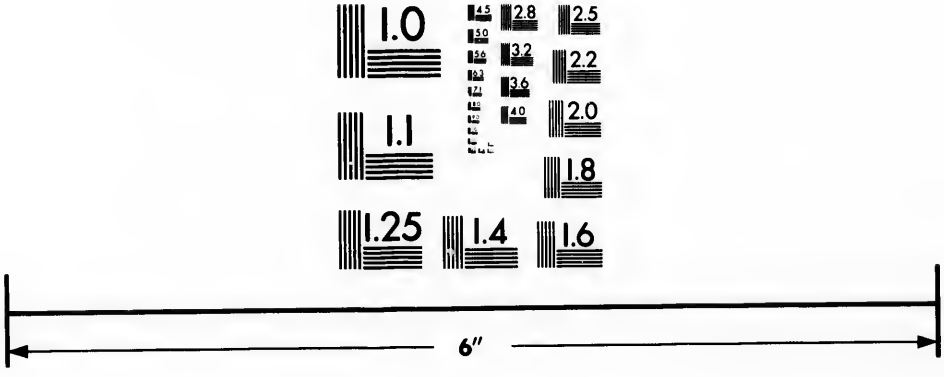
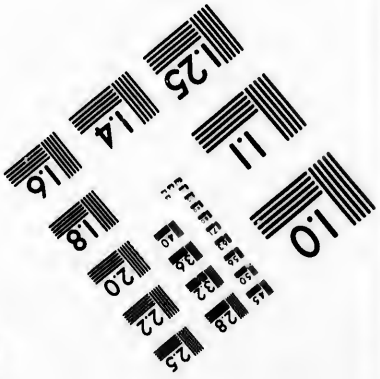


IMAGE EVALUATION TEST TARGET (MT-3)





Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

2.8
3.2
2.5
3.6
2.2
2.0
1.8
1.1
1.0

A. & E. 684; R. v. Bennett, 3 O. R. 45; or where the defendant is already present before the justices. Turner v. Postmaster-General, 5 B. & S. 756; R. v. Hughes. L. R. 4 Q. B. D. 614.

But a defendant who has been summoned from without the jurisdiction of the justices for an offence that has taken place also out of their jurisdiction, does not by his appearance on the summons cure the defect of want of jurisdiction. Johnson v. Colam, L. R. 10 Q. B. 544.

The laying of the information or complaint will give the magistrate jurisdiction to hear the case if the defendant appears; and though no summons is issued or any steps taken to bring the person complained of before the magistrate. Where the information or complaint is laid, the actual presence of the defendant is all that is required, whether he appears voluntarily or on summons or warrant is immaterial, the magistrate having jurisdiction in either case: R. v. Mason, 29 Q. B. (Ont.) 431. And if a party appears and defends without any summons being issued, he cannot afterwards object that there was no complaint on oath. *Ex parte* Wood, 1 Allen, 422. See Code, s. 577.

But in order to give jurisdiction over the person of the offender, in the case of a summary conviction, it must either appear that an information has been laid, or that the information has been waived. Stoness v. Lake, 40 Q. B. (Ont.) 326; R. v. Fletcher, L. R. 1 C. C. R. 320; Blake v. Beech, L. R. 1 Ex. D. 320.

The plaintiff, on an information against him for selling liquor without a license, was brought before the defendants, magistrates. It was proved that this was his second offence, though the information did not charge it as such. The plaintiff, represented by counsel, disputed the evidence as to the first conviction, but did not object to the information, and the magistrates convicted and adjudged him to be imprisoned for ten days, which they had power to do only for a second offence. It was held that the plaintiff had waived the objection to the information, and that defendants were not liable in trespass. Stoness v. Lake, 40 Q. B. (Ont.) 320.

There is a marked distinction between the jurisdiction to take cognizance of an offence and the jurisdiction to issue a particular process to compel the accused to answer it. For the former pur-

pose a written information is not necessary, nor is any process required when the accused is bodily before the magistrate, and the charge is made in his presence, and he appears and answers it without objection; and the same rule applies to illegal process as to no process. Thus where H., a constable, procured a warrant to be illegally issued, without a written information on oath for the arrest of S., upon a charge of assaulting and obstructing him, H., in the discharge of his duty, upon such warrant, S. was arrested and brought before justices and was, without objection, tried by them and convicted, the court held that the conviction was right. R. v. Hughes, L. R. 4 Q. B. D. 614.

As a matter of strict law where there is no statute imperatively requiring the service of a summons as a condition precedent to jurisdiction a magistrate may convict a defendant who appears and submits to the jurisdiction though there has been no information, complaint or summons. R. v. Hughes, 4 Q. B. D. 614. See *ante*, p. 158.

Every complaint or information may be laid or made by the complainant or informant in person or by his counsel or attorney or other person authorized in that behalf. The person aggrieved or some specified individual must be the informer, if the statute so states. R. v. Daman, 2 B. & A. 378. But if no prosecutor is described, then any person may inform. Morden v. Porter, 7 C. B. N. S. 641, even though the penalties go to a specified individual. Coles v. Coulton, 2 E. & E. 695.

It seems that it is not necessary, under this statute, that the justice who issues the summons should also hear and determine the matter. See Code, ss. 563, s-s. 3 and 843, also forms E and F. Under the R. S. O. c. 139, respecting master and servants, the justice who issues the summons has no exclusive right to deal with the case. Where on the return of the summons issued by one justice under this statute, two other justices were present, who, without any objection from the justice issuing the summons, heard the complaint with him, the conviction of the latter, in opposition to the judgment of the other two, was quashed. R. v. Milne, 25 C. P. (Ont.) 94.

846. No information, complaint, warrant, conviction or other proceeding under this part shall be deemed objectionable or insufficient on any of the following grounds, that is to say:

(*a*) that it does not contain the name of the person injured, or intended or attempted to be injured; or

(*b*) that it does not state who is the owner of any property therein mentioned; or

(*c*) that it does not specify the means by which the offence was committed; or

(*d*) that it does not name or describe with precision any person or thing:

Provided that the justice may, if satisfied that it is necessary for a fair trial, order that a particular further describing such means, person, place or thing be furnished by the prosecutor.

Section 613 of the Code is somewhat fuller than this, and though the word "count" used in that section includes information, see Code s. 3 (*l*), it is not probable that s. 613 applies to informations or complaints.

847. No objection shall be allowed to any information, complaint, summons or warrant for any alleged defect therein, in substance or in form, or for any variance between such information, complaint, summons or warrant and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint.

2. Any variance between the information for any offence or act punishable on summary conviction and the evidence adduced in support thereof as to the time at which such offence or act is alleged to have been committed, shall not be deemed material if it is proved that such information was, in fact, laid within the time limited by law for laying the same.

3. Any variance between the information and the evidence adduced in support thereof, as to the place in which the offence or act is alleged to have been committed, shall not be deemed material if the offence or act is proved to have been committed within the jurisdiction of the justice by whom the information is heard and determined.

4. If any such variance, or any other variance between the information, complaint, summons or warrant, and the evidence adduced in support thereof, appears to the justice present and acting at the hearing to be such that the defendant has been thereby deceived or misled, the justice may, upon such terms as he thinks fit, adjourn the hearing of the case to some future day. R. S. C. c. 178, s. 28.

When the information charges two offences it is a defect in substance within the meaning of this section. The proper course for the magistrate is to call upon the prosecutor to elect on which charge he will proceed and to amend the information accordingly

by confining it to the charge which is to be prosecuted. Rodgers v. Richards, L. R. 1 Q. B. 555 (1892).

The information in a prosecution under "The Canada Temperance Act" stated a sale of liquor by the defendant on the 2nd March, but the summons stated the sale to have been on the 7th April. The evidence proved sales on both days, and the conviction was for selling on the 7th April. No objection was taken at the trial that the defendant was misled by the variance. If such objection had been taken the variance might have been amended under s. 116 of the Act, and this 847th section of the Code was held to cure the defect. *Ex parte* Groves, 26 S. C. N. B. 437.

Every objection to any information, for any defect apparent on the face thereof, should be taken before the magistrate, when the substance of the information is stated to the defendant under s. 856 of the Code. If not then taken the objection will be waived, and if the objection is taken, the magistrate may forthwith cause the information to be amended in such particular. See R. v. Cavanagh, 27 C. P. (Ont.) 537. See ss. 847 and 882 of the Code. Where, therefore, objection was taken to a conviction for selling liquor without license, that the conviction did not name or otherwise describe the person to whom the liquor was sold, it was held that the objection should have been made before the magistrate, and though a fatal objection, if taken at the proper time, it was removed by the delay.

According to the decision in R. v. Cavanagh, 27 C. P. (Ont.) 537, that the law as to criminal procedure applies to informations in cases of summary convictions, all the provisions of that law already given in relation to indictable cases, will apply to informations under this Act.

Attention is called to the form FF in the schedule. It will be sufficient if informations state offences in the manner shown in this form.

In R. v. Cavanagh, 27 C. P. (Ont.) 537, it was held that the information might be amended. See Code, ss. 3 (*l*) and 629; also Crawford v. Beattie, 39 Q. B. (Ont.) 13, *ante*, p. 76. But if the information is on oath, it must be resworn. *Re* Conklin, 31 Q. B. (Ont.) 160.

And it seems that the amendment makes the information a new one and that there should be another summons if the defendant does not waive it. R. v. Bennett, 3 O. R. 64.

Where the information is for one offence, and where, if the defendant appear, the charge against him is for another offence, the proceedings are irregular and the conviction cannot be upheld. Martin v. Pridgeon, 1 E. & E. 778. But such an irregularity may be waived. Turner v. Postmaster-General, 5 B. & S. 756. And it seems the proper course for the justices in such a case, would be to amend the information.

The general rule is that no person can have an order or conviction made against him without first being summoned and having an opportunity of defence, but his appearing will waive the summons. R. v. Smith, L. R. 1 C. C. R. 110, even where no summons is issued. R. v. Bennett, 3 O. R. 45.

But asking an adjournment for the purpose of procuring evidence is not necessarily a waiver of a summons or notice. R. v. Vrooman, 1 M. L. R. 509.

An information by a person who has no authority to make it is the same as no information, and this provision in the Act, curing objections for defects in form, must be held to apply only to informations made by persons who have authority to make them, and not to give validity to an information made by a person without any authority. *Ex parte* Eagles, 2 Hannay, 51.

In all cases after judgment given, and in the event of an appeal, the appellant will not be allowed to succeed for any such variance, unless he proves that the objection was made before the justice trying the case, and unless he also proves that such justice refused to adjourn, on its being shown to him that the person summoned, etc., was deceived or misled by the variance. See s. 882 of the Code.

Under the 883rd section the appeal is to be disposed of on its merits, notwithstanding any defect of form.

Any objection will be disposed of, if both parties still consent to the justice proceeding in the case. R. v. Cheltenham, 1 Q. B. 467.

Objections should be distinctly taken at first, for a person cannot waive the objection, and renew it when the decision is against him. Wakefield v. West Riding, L. R. 1 Q. B. 84. If a party appears before justices and allows a charge which they have jurisdiction to hear, to be proceeded with without objection, he waives the want of a summons. R. v. Shaw, 11 Jur. N. S. 415.

An information, not under oath, was laid for selling liquor without license. The defendant's counsel appeared, however, on the day of trial, and though he raised this objection he did not ask a delay or adjournment. The justice then proceeded with the hearing, the defendant's counsel cross-examined the witnesses, and the justice, upon clear proof of the offence charged, convicted the defendant. It did not appear that the defendant was in any way misled or prejudiced by the alleged defect in the information. Under these circumstances it was held that the statute cured the defect. R. v. McMillan, 2 Pugsley, 110.

If the information is not on oath, this 847th section would seem to warrant the justice in proceeding to hear a charge quite defectively stated, if the evidence shewed an offence had been committed over which he had jurisdiction, without any amendment in terms being made in the information. The defendant being present, the evidence would amount to a charge which he was bound there and then to answer, unless the hearing is adjourned by the justice, and a conviction valid in form supported by evidence would not be liable to be quashed because it varied from the original information. R. v. Bennett, 1 O. R. 445.

A summons under the Canada Temperance Act issued by one justice on an information laid before two justices, recited the laying of the information "before the undersigned," and the court held that though the summons did not conform to the facts, yet as the two justices who took the information were both present at the hearing, and the defendant was convicted on the merits, the objection was cured by this section. R. v. Durnion, 14 O. R. 672. See also R. v. Green, 12 P. R. (Ont.) 373.

The objection that the defendant has pleaded guilty to a defective information is not admissible in view of the provisions of this section. R. v. McCarthy, 12 O. R. 657.

When proceedings in the nature of a criminal prosecution are set on foot by a sufficient information laid before a magistrate, and he issues a summons on such information, the death of the informer causes no abatement of the proceedings. R. v. Truelove, 14 Cox, 408. It would also seem that after laying the complaint, the complainant cannot, by making terms with the defendant, prevent the magistrate from going on with the case.

848. A summons may be issued to procure the attendance, on the hearing of any charge under the provisions of this part, of a witness who resides out of the jurisdiction of the justices before whom such charge is to be heard, and such summons and a warrant issued to procure the attendance of a witness, whether in consequence of refusal by such witness to appear in obedience to a summons or otherwise, may be respectively served and executed by the constable or other peace officer to whom the same is delivered or by any other person, as well beyond as within the territorial division of the justice who issued the same. 51 V. c. 45, ss. 1 and 3.

This section differs from ss. 580 and 584 of the Code, though s. 843 seems to provide the same means of procuring witnesses under this part as in the case of a preliminary inquiry into an indictable offence.

849. The room or place in which the justice sits to hear and try any complaint or information shall be deemed an open and public court, to which the public generally may have access so far as the same can conveniently contain them. R. S. C. c. 178, s. 33.

The case is different where the justice is merely holding a preliminary inquiry. See Code, s. 586 (*d*).

850. The person against whom the complaint is made or information laid shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf.

2. Every complainant or informant in any such case shall be at liberty to conduct the complaint or information, and to have the witnesses examined and cross-examined, by counsel or attorney on his behalf. R. S. C. c. 178, ss. 34 and 35.

This right of defence extends to the cross-examination of witnesses for the prosecution, and to the examination of a sitting magistrate as to his interest in the prosecution, but not to the extent of compelling the prosecution to disclose the sources of their information. In a prosecution under the "Canada Temper-

ance Act" it was claimed that C. and M. were members of an association for the enforcement of the Act, and that they were instrumental in laying the charge and in selecting the magistrates, and that one of the magistrates hearing the case was also a member of the association and had been present at a meeting thereof. At the hearing S. the License Inspector, who had laid the information, gave evidence in support of the charge. On cross-examination by the defendant, he was asked whether the License Commissioners were consulted before laying the charge; whether he laid it of his own accord or had consulted with any person outside of the Commissioners, and his reason for suspecting and believing that liquor was sold, etc. Whom did he see before laying the information? Did he see the magistrate or C. or M.? Had C. and M. anything to do with the selection of the magistrates? The magistrates ruled that he was not bound to answer these questions, and he refused to do so. One of the magistrates was called as a witness for the defence with a view of showing his interest, but he refused to be sworn or to give evidence. It was held that the justices properly refused to allow the disclosure of the sources of information on which the complaint was founded; but by their refusal to allow the cross-examination of S. in reference to his communication with one of the magistrates and the other alleged members of the association, and in refusing to allow the magistrate to be sworn as a witness, the defendant was deprived of his right of making full defence under this section. R. v. Sproule, 14 O. R. 375.

Under the English Act worded the same as this, it was held that an inspector of the society for prevention of cruelty to animals who was not a solicitor or counsel but who had preferred an information and complaint before the court of summary jurisdiction against a person for cruelty to animals had a right to appear on behalf of such society and to examine and cross-examine witnesses on the hearing of such information. Duncan v. Toms, 16 Cox, 267. See, however, the cases referred to, *ante*, p. 84.

851. Every witness at any hearing shall be examined upon oath or affirmation, and the justice before whom any witness appears for the purpose of being examined shall have full power and authority to administer to every witness the usual oath or affirmation. R. S. C. c. 178, s. 47.

In the case of a preliminary inquiry on a charge for carnally knowing a girl under fourteen, and in certain other cases witnesses of tender years may give evidence not on oath. See Code, s. 685. See also 56 V. c. 31, s. 25, as to the evidence of a child of tender years. The defendant and his wife are both competent to give evidence. See 56 V. c. 31, s. 3.

Where magistrates first took the examination of witnesses not on oath, in support of a conviction, and afterwards swore them to the truth of their evidence, the court expressed its disapprobation of the practice. R. v. Kiddy, 4 D. & R. 734.

852. If the information or complaint in any case negatives any exemption, exception, proviso or condition in the statute on which the same is founded it shall not be necessary for the prosecutor or complainant to prove such negative, but the defendant may prove the affirmative thereof in his defence if he wishes to avail himself of the same. R. S. C. c. 178, s. 38.

Where there is an exception in the statute on which the information is laid, the information or complaint should negative the exception; in such case it is not necessary that proof thereof should be adduced by the informant or complainant, but if the information does not negative, the exception, and there is no evidence to prove the negative, the conviction will be invalid. R. v. Mackenzie, 6 O. R. 165.

There is a provision in the R. S. C. c. 131, s. 20, respecting trade unions that exceptions, etc., need not be specified in the information but may be proved by the defendant, but if specified and negatived in the information no proof shall be required on the part of the informant or prosecutor.

853. In case the accused does not appear at the time and place appointed by any summons issued by a justice on information before him of the commission of an offence punishable on summary conviction then, if it appears to the satisfaction of the justice that the summons was duly served a reasonable time before the time appointed for appearance, such justice may proceed *ex parte* to hear and determine the case in the absence of the defendant, as fully and effectually, to all intents and purposes, as if the defendant had personally appeared in obedience to such summons, or the justice, may, if he thinks fit, issue his warrant as provided by section five hundred and sixty-three of this Act and adjourn the hearing of the complaint or information until the defendant is apprehended. R. S. C. c. 178, s. 39.

This section is given as amended by 56 V. c. 32.

As to the interpretation of the words, "if he thinks fit," see R. v. Adamson, L. R. 1 Q. B. D. 201; R. v. Boteler, 4 B. & S. 959.

Under this section there must be evidence that a reasonable time has elapsed between the service of the summons and the day appointed for the hearing. A summons was issued for selling liquor contrary to the "Canada Temperance Act," which was served by leaving it with the defendant's wife at his hotel, on the 20th March, requiring him to appear on the 22nd. The defendant did not appear at the time and place mentioned in the summons, and on the constable proving on oath the manner in which the summons had been served, the magistrate proceeded *ex parte* to hear and determine the case, and convicted defendant of the offence charged, and imposed a fine. At the time of the service of the summons the defendant was absent in the States at a trial, and there was no evidence that his wife was informed by the constable of the purport of the summons, while defendant stated that he knew nothing of the matter until four or five days after the conviction had been made, when he received a letter from his wife stating that some magistrate's papers had been left for him at the hotel. The court quashed the conviction as being made without jurisdiction in the absence of evidence showing that a reasonable time for appearance had been given to the defendant. R. v. Maybee, 17 O. R. 194. The court expressed the opinion that R. v. Ryan, 10 O. R. 254, was erroneously decided; at all events it does not apply since the words "upon the party" have been omitted from the statute.

To force on the trial of a case without giving the defendant time to prepare his defence, is contrary to natural justice, and the conviction will be set aside. In one case a summons was served about 4 p.m. on the 21st of September, calling upon the defendant to appear at 8.30 a.m. on the 22nd, and on the latter day, at 8.15 a.m., two other summonses for similar offences were served requiring the defendant to appear before the magistrate at 9 a.m. on the day of service. When the court met, the first case was partially gone into, and before it was closed the prosecutor asked the magistrate to take up the second and third cases. The defendant stated that he had not understood what the second

summonses meant, as he was served while in the act of leaving home to attend to the first case, and by advice of counsel he refused to plead. The magistrate entered a plea in each case of not guilty and went on with both cases. The defendant and his counsel were in court all the time awaiting completion of the evidence in the first case, but refused in any way to plead or take part in the second and third cases, or to ask adjournment thereof. The magistrate, after taking all the evidence therein, at request of defendant adjourned the first case, and in the second and third cases convicted the defendant. It was shown by affidavit that the magistrate was willing, had the defendant pleaded, to adjourn after taking the evidence of the witnesses present. The court held that the proceedings were contrary to natural justice, as the summonses were served almost immediately before the sittings of the court, which defendant had already been summoned to attend, and the convictions were quashed with costs against the complainant. R. v. Eli, 10 O. R. 727.

Where a defendant has had a proper opportunity to appear, he cannot defeat the ends of justice by refusing to attend the hearing. A defendant summoned for selling liquor contrary to the "Canada Temperance Act," appeared with his counsel at the hearing, and pleaded not guilty, when evidence was given for the prosecution justifying a conviction, but at the defendant's request an adjournment was granted. At the adjourned hearing, at which neither defendant nor his counsel appeared, evidence was given of the service of the summons, and of the facts that transpired at the former hearing, and two prior convictions were put in and the identity of the defendant proved, it was held that the defendant had a sufficient opportunity to defend, and might be convicted in his absence. R. v. Kennedy, 17 O. R. 159.

A warrant was issued by a magistrate for the apprehension of the defendant, who was brought before another magistrate thereon, convicted and fined; subsequently the magistrate who had issued the warrant caused the defendant to be summoned before him for the same offence, and again convicted and fined him after refusing to receive evidence of the prior conviction. The court quashed the second conviction with costs, and held that,

even assuming that the first conviction was void by reason of the defendant having been brought before a magistrate other than the one who issued the warrant, his appearance and pleading thereto amounted to a waiver, and at any rate the magistrate who convicted a second time could not take advantage thereof. R. v. Bernard, 4 O. R. 603.

854. If, upon the day and at the place so appointed, the defendant appears voluntarily in obedience to the summons in that behalf served upon him, or is brought before the justice by virtue of a warrant, then, if the complainant or informant, having had due notice, does not appear by himself, his counsel or attorney, the justice shall dismiss the complaint or information unless he thinks proper to adjourn the hearing of the same until some other day upon such terms as he thinks fit. R. S. C. c. 178, s. 41.

See s. 873 of the Code as to the recovery of costs against the prosecutor, also s. 868.

855. If both parties appear, either personally or by their respective counsel or attorneys, before the justice who is to hear and determine the complaint or information such justice shall proceed to hear and determine the same. R. S. C. c. 178, s. 42.

If, after the issue of the summons, and before the day appointed for the hearing by the justice, the parties compromise the matter and inform the justice thereof, the justice has still jurisdiction to convict, and may, on taking the evidence in the case, legally adjudicate thereon notwithstanding the compromise. R. v. Justice Wiltshire, 8 L. T. N. S. 242. See also R. v. Truelove, 14 Cox, 408.

Under this section, in all cases of offences punishable on summary conviction, the defendant may be represented on the hearing by counsel or attorney, and the actual personal presence of the defendant is not required. Bessell v. Wilson, 1 E. & B. 489-500.

It is optional with the defendant to send a solicitor to appear for him. *Ib.* See also section 857. In the case of corporations, the regular practice is to appear by attorney. Code, s. 635.

A defendant not present at the trial, but represented by attorney, may be convicted of a third offence under "The Canada Temperance Act." *Ex parte* Grieves, 29 S. C. N. B. 543.

856. If the defendant is present at the hearing the substance of the information or complaint shall be stated to him, and he shall be asked if he has any cause

to show why he should not be convicted, or why an order should not be made against him, as the case may be.

2. If the defendant thereupon admits the truth of the information or complaint, and shows no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case may be, the justice present at the hearing shall convict him or make an order against him accordingly.

3. If the defendant does not admit the truth of the information or complaint, the justice shall proceed to inquire into the charge and for the purposes of such inquiry shall take the evidence of witnesses both for the complainant and accused in the manner provided by Part XLV. in the case of a preliminary inquiry: Provided that the prosecutor or complainant is not entitled to give evidence in reply, if the defendant has not adduced any evidence other than as to his general character; provided further, that in a hearing under this section the witnesses need not sign their depositions. R. S. C. c. 178, ss. 43, 44 and 45.

As to the manner of taking the evidence in the case of a preliminary inquiry, see section 590 of the Code, *ante*, p. 87.

The statement of the accused, form T is not taken in the case of summary proceedings.

The admission referred to in sub-section 2 of section 856 should not only agree with the charge, but should contain an admission of such facts as amount to the complete offence complained of, for the confession only admits the charge, not the legal effect of it.

Where a defendant submits to examination before a magistrate, it is too late afterwards to object to its propriety, but such appearance and examination will not give jurisdiction where there is otherwise none. R. v. Ramsay, 11 O. R. 210.

It is the duty of the magistrate to take the examination and evidence in writing. See R. v. Flannigan, 32 Q. B. (Ont.) 593-599. Code, s. 590, s-s. 3.

Under this section the prosecutor or complainant has no right to go into evidence in reply, unless the defendant has examined witnesses other than as to his general character. See Code, s. 676.

The plain rule is that witnesses for the defence, in the absence of any provision expressly taking away the right to examine them, are admissible as a matter of unquestionable right. *Re* Holland, 37 Q. B. (Ont.) 214. See also R. v. Sproule, 14 O. R. 375. See 56 V. c. 31.

The refusal to admit material evidence when tendered by the defendant will be good ground for quashing a conviction. Thus

where a by-law prohibited the beating of drums or other unusual noises on the streets, and the conviction was for beating a drum simply, it was held that evidence should have been given by the prosecution shewing that the beating of a drum produced an unusual noise, and a refusal to admit evidence on the part of the defendant shewing that the noise was not unusual, was a good ground on which to quash the conviction. R. v. Nunn, 10 P. R. (Ont.) 395. See also R. v. Meyer, 11 P. R. (Ont.) 477.

857. Before or during the hearing of any information or complaint the justice may, in his discretion adjourn the hearing of the same to a certain time or place to be then appointed and stated in the presence and hearing of the party or parties, or of their respective solicitors or agents then present, but no such adjournment shall be for more than eight days.

2. If, at the time and place to which the hearing or further hearing is adjourned, either or both of the parties do not appear, personally or by his or their counsel or solicitors respectively, before the justice or such other justice as shall then be there, the justice who is then there may proceed to the hearing or further hearing as if the party or parties were present.

3. If the prosecutor or complainant does not appear the justice may dismiss the information, with or without costs as to him seems fit.

4. Whenever any justice adjourns the hearing of any case he may suffer the defendant to go at large or may commit him to the common gaol or other prison within the territorial division for which such justice is then acting, or to such other safe custody as such justice thinks fit, or may discharge the defendant upon his recognizance, with or without sureties at the discretion of such justice, conditioned for his appearance at the time and place to which such hearing or further hearing is adjourned.

5. Whenever any defendant who is discharged upon recognizance, or allowed to go at large, does not appear at the time mentioned in the recognizance or to which the hearing or further hearing is adjourned the justice may issue his warrant for his apprehension. R. S. C. c. 178, ss. 48, 49, 50 and 51.

The power to adjourn the court when necessary was not given by this section, because that is a power incident to every court. Its object was to limit the power of adjournment to a certain number of days. But a justice has power to make several adjournments of a hearing before him extending in the aggregate over eight days, provided no one adjournment exceeds that period. *Ex parte* Welsh, 28 S. C. N. B. 214.

As there is inherent power by common law for the magistrate to adjourn, the section cannot be interpreted to mean more than it

says. The section prohibits only the adjournment of the hearing, and does not prevent the adjournment of the adjudication or determination of the charge after the hearing is completed, and justices are not obliged to fix the fine or punishment at the instant of conviction, but may take time either for the purpose of informing themselves as to the legal penalty, or the amount proper to be imposed, or taking advice as to the law applicable to the case. R. v. Hall, 12 P. R. (Ont.) 142; R. v. Alexander, 17 O. R. 458.

In reference to the provisions of this section care should be taken that the adjournment is not for more than eight days. If such adjournment is made, the magistrate would not have jurisdiction to proceed at the adjourned hearing, and a conviction made then would be quashed. R. v. French, 13 O. R. 80. But it would seem this is the rule only where the defendant does not ask the adjournment and does not appear at the adjourned hearing. Where an adjournment longer than the prescribed period was made at the request of the defendant, who afterwards attended on the resumed proceedings, taking his chance of securing a dismissal of the prosecution, and urging that on the evidence it ought to be dismissed, it was held that the defendant had estopped himself from objecting afterwards that such subsequent proceedings were illegal by reason of the adjournment. R. v. Heffernan, 13 O. R. 616. It seems that this provision as to adjournment is directory only. At all events in the opinion of the writer, the case of R. v. French, *supra*, went too far in the direction of holding every adjournment for more than the limited time illegal. If the defendant's appearance without summons will authorize his conviction, because he submits to the jurisdiction, there can be no reason why his appearance at the adjournment would not also give jurisdiction; and in Manitoba it has been held that the absence of a formal adjournment of the proceedings before a magistrate may be waived by a subsequent appearance, *re* Bibby, 6 M. L. R. 472.

It seems that an adjournment for four weeks or any period longer than eight days cannot be legally made, but if at the end of that time the defendant appears and asks for further time, the objection would be waived, but if the magistrate after adjourning

to a time and place certain, changes such time and place without the knowledge of the defendant and in the face of the protest of his counsel, this will render the conviction invalid. R. v. Hall, 8 O. R. 407.

Under the former statute the adjournment could not be for more than "one week," instead of eight days. A week was held to be a period of seven days computed from and exclusive of the day of adjournment and including the whole of the last of the seven days, that is up to midnight, so that if the adjournment were actually made at 6 p.m., the fact that the court did not sit to 6.30 p.m. on the last day to which the hearing was adjourned, would not make any difference. R. v. Collins, 14 O. R. 613.

Where none of the adjournments are for more than eight days, it is immaterial that the whole exceed a month, and it seems the Act is not intended to prevent more than one adjournment. At all events a witness, regularly summoned to attend the trial could not take advantage of this objection. Messenger v. Parker, 6 Russ. & Geld. 237.

If justices of the peace adjourn their proceedings to a day subsequent to the repeal of an Act of Parliament, under which they act, their jurisdiction will cease. R. v. Loudin, 3 Burr. 1456.

Where a defendant having appeared in answer to a summons for an offence punishable on summary conviction after the evidence taken and before judgment or sentence, forcibly leaves the court, the justices may adjourn, and at the adjourned sitting of the court, if the defendant do not appear, may in his absence convict him of the offence with which he was charged. R. v. Justices, Carrick-on-suer, 16 Cox, 571.

After the evidence is all taken and the hearing closed, if the magistrate is not prepared to render judgment, he cannot adjourn the case without naming a day certain for the giving of judgment. The defendant is entitled to be present when judgment is given for the purpose of protecting his rights. Where a justice adjourned without day stating in the presence of all parties that he would make up his judgment and notify the parties affected, which he did in

time for an appeal from the conviction, the course was held to be illegal and the conviction was quashed. R. v. Morse, 22 N.S.R. 298.

On the trial of an offence under the "Liquor License Act" in Nova Scotia the justice, at the close of the evidence adjourned to no particular day for the purpose of giving judgment. On a subsequent day he gave notice in open court that he would give judgment on the following day. The defendant appearing on the day named for judgment was called and examined as to a previous conviction, but his solicitor was not present. Judgment was then given convicting for a subsequent offence. The conviction was held illegal under s. 47 of c. 103 of the R. S. N. S. (which is somewhat similar to this 857th section of the Code), because the hearing being closed there could not be an adjournment for further evidence and also because defendant should have been first found guilty of the subsequent offence and then only asked as to the previous conviction. R. v. Gough, 22 N. S. R. 516.

Where a case before the Recorder's Court was adjourned to a stated day and hour, a judgment and conviction pronounced against the defendant in the absence of his witnesses and of his counsel who had obtained the adjournment is null and void. Martin v. DeMontigny, 4 Mont. S. C. 53.

Where a magistrate had a commission as a police magistrate for the county of Halton, and an independent and subsequent commission for the town of Oakville, and he took the information and part of the evidence at Georgetown and then adjourned to Oakville, and subsequently from Oakville back to Georgetown where he adjudicated upon the evidence and made the conviction. The court held that the magistrate had jurisdiction to sit in Oakville under his commission as police magistrate for the county, and he consequently had jurisdiction to adjourn as he did. R. v. Clark. 15 O. R. 49.

Information having been laid before the defendant, a justice of the peace against the plaintiff, he issued a summons and copy, but the copy was defective in not containing the return day. The constable made oath before the justice that he had served a true copy of the summons, whereupon the plaintiff not appearing at the return, the defendant issued the warrant in form G in the statute,

for the plaintiff's arrest. On being brought before the defendant the plaintiff refused to enter into a recognizance, though the justice offered to take his own recognizance. The justice thereupon by warrant, remanded the plaintiff to the "common gaol at Kingston," King's county, for five days, from which he was discharged by a judge's order. An Act had just been passed, not known to the defendant, removing the shire town from Kingston, and making the common gaol of St. John or Westmoreland the common gaol of Kings. The court held that the justice was not liable in the absence of malice or want of reasonable and probable cause, and that the plaintiff's imprisonment was legal as a remand for safe custody under this section of the statute. Birch v. Perkins, 2 Pugsley, 327.

The commitment, therefore, under s-s. 4 of this 857th section, need not necessarily be to the common gaol of the county for which the justice acts. It may be to "such other safe custody" as the justice may think fit, *Ib.*

858. The justice, having heard what each party has to say, and the witnesses and evidence adduced, shall consider the whole matter, and, unless otherwise provided, determine the same and convict or make an order against the defendant, or dismiss the information or complaint, as the case may be. R. S. C. c. 178, s. 52.

Justices of the peace have no jurisdiction to convict summarily at common law in any case, but in all cases a direct legislative authority must be shewn or the conviction will be illegal. Bross v. Huber, 18 Q. B. (Ont.) 286. See also Ferguson v. Adams, 5 Q. B. (Ont.) 194; R. v. Carter, 5 O. R. 651.

The jurisdiction of justices to hear and determine offences summarily is entirely given by the statutes creating the offence. Although owing to some omission in the statute, summary jurisdiction may not be expressly given, the justices may still proceed when it may reasonably be implied from the rest of the statute, that such jurisdiction was intended to be given to them. Cullen v. Tremble, L. R. 7 Q. B. 416; Johnson v. Colam, L. R. 10 Q. B. 544.

In summary proceedings the justice is substituted for a jury and it is sufficient to authorize a conviction that there is such

evidence before the magistrate as might in an action or on an indictment be left to a jury, and the court will not, when the conviction is brought before it, examine further to see whether the conclusion drawn by the magistrate be or be not the inevitable conclusion from the evidence. R. v. Alexander, 17 O. R. 458.

The defendant who was summoned to appear before the police magistrate on April 14th at F., for unlawfully selling liquor contrary to the "Canada Temperance Act," instructed C. to go to W. where the police magistrate resided, to try and arrange the matter by paying such sums as should be demanded by the magistrate. On April 13th, C. went to W. and settled the case by paying $55, and at the same time C., without authority and without the paper having been read to him, signed in defendant's name as his agent an endorsement on the information, which stated that the information had been read over to the defendant, who pleaded guilty to the same. On April 14th, the police magistrate at W., without holding any court or calling any witnesses in support of the charge and without defendant being present, convicted him of the offence charged and fined him $50 and costs, drawing up a formal conv ɔ-tion, which was returned. Subsequently he returned another conviction for the same offence reciting that the conviction was made on April 14th at F. by defendant admitting the charge. The court held that under these circumstances there could be no conviction and that it must be quashed. R. v. Edgar, 17 O. R. 188.

859. If the justice convicts or makes an order against the defendant a minute or memorandum thereof shall then be made, for which no fee shall be paid, and the conviction or order shall afterwards be drawn up by the justice on parchment or on paper, under his hand and seal, in such one of the forms of conviction or of orders from VV to AAA inclusive in schedule one to this Act as is applicable to the case or to the like effect. R. S. C. c. 178, s. 53.

Under the R. S. C. c. 1, s. 7 (44), wherever forms are prescribed slight deviations therefrom not affecting the substance or calculated to mislead shall not vitiate them.

Where an Act of Parliament gives the form of conviction for an offence prohibited by the Act, that form must be followed, and a warrant granted on a conviction drawn up in any other form is illegal, and the justice and those acting under it are trespassers.

Dawson v. Gill, 1 East, 64; Goss v. Jackson, 3 Esp. 198. It is in general sufficient if a conviction follows the forms set out in the statutes, for the forms are intended as guides to justices, and otherwise they would prove only snares to entrap persons. R. v. Shaw, 23 Q. B. (Ont.) 616; Reid v. McWhinnie, 27 Q. B. (Ont.) 289; *ex parte* Eagles, 2 Hannay, 51; Moore v. Jarron, 9 Q. B. (Ont.) 233; R. v. Strachan, 20 C. P. (Ont.) 182; Moffatt v. Barnard, 24 Q. B. (Ont.) 498. See Code, s. 982.

In some cases however the form must be altered in order to bring the description of the offence within the statute on which it is founded, for it is a rule that where a statute gives a form of conviction, not fully describing the offence, the conviction nevertheless must fully describe it. In that part, however, which awards the penalty, or the like, the form may be followed, even although it does not strictly comply with the requirements of the Act. R. v. Johnson, 8 Q. B. 102.

Such alterations also as are requisite to render the form applicable to the special circumstances of the case may be made, and indeed in all cases if the form is substantially pursued or if equivalent language be used, it is no objection that it has not been followed verbatim. *Re* Boothroyd, 15 M. & W. 1.

This section does not render the use of the forms compulsory, and if the conviction contains everything required by the form given, it will not be vitiated by unnecessarily stating more than is required. Thus, if in addition to the form, it set out the information, summons, appearance and names of witnesses. R. v. Jeffries, 4 T. R. 768.

Any defect in the manner of stating that which is in itself surplusage, does not vitiate the rest which is sound. *Ib.*

In the use of the forms of conviction given by this Act, it must be remembered that they are applicable to all previous penal statutes, whether they contain particular forms of convictions or orders or not, and to all subsequent statutes not containing particular forms of convictions or orders. *Ex parte Allison*, 10 Ex. 551. If by any subsequent statute a particular form be prescribed as indispensably necessary, such provision must be strictly complied with. R. v. Jefferies, 4 T. R. 169.

Where there is a discrepancy between the body of an Act and a form in the schedule, the plain words of the former should govern and therefore a conviction under section 56 of the "Manitoba Liquor License Act" 1886, is good though it does not direct distress previous to imprisonment, section 77 which imposes the penalty containing no reference to a prior distress. R. v. Grannis, 5 M. L. R. 153. See also R. v. Starkey, 7 M. L. R. 43.

The blanks in the form of a conviction for a penalty and costs to be levied by distress, and in default of sufficient distress by imprisonment, are to be filled up as follows:—

1. The name of the province and territorial division within which the conviction was rendered.

2. The date of the conviction, giving the day, month, and year in full, without using figures.

3. The place where the conviction was so rendered, showing also the territorial division within which the said place is situate.

4. The name, residence and occupation of each of the defendants. If there are two or more offenders they cannot be described as A. and company. R. v. Harrison, 8 T. R. 508.

5. The number of the justices convicting.

6. The statement of the offence.

The place for which the justice acts must be shown, and it must be alleged that the offence was committed within the limits of his jurisdiction, or facts must be stated which give jurisdiction beyond those limits. See R. v. Young, 5 O. R. 400.

But alleging the act to be done at a certain place in the township of A. is sufficient, if a public statute shows that that township is within the county for which the justice is appointed. R. v. Shaw, 23 Q. B. (Ont.) 616. See also R. v. Edwards, 1 East, 278; R. v. Hazell, 13 East, 139; R. v. Young, 7 O. R. 88.

When by special statute jurisdiction is given to justices of the territorial division within which an offender is found, the offence having been committed in another territorial division, in addition to setting out the place where the offence is committed, it is neces-

sary to set out the fact of his having been found at some place within the territorial division of the convicting justice. *Re* Peerless, 1 Q. B. 143.

An information described the parties as of the township of East Whitby, and it had "County of Ontario" in the margin. It alleged that they kept a house of ill-fame, but it did not in so many words allege that they did so in the township of East Whitby or in the county of Ontario in which the township was. The evidence, however, showed that the house was in East Whitby, in which the justices had jurisdiction, and this was held sufficient. R. v. Williams, 37 Q. B. (Ont.) 540.

A conviction 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. By statute it appeared that the municipality of North Cypress was in the county of Norfolk. There was no affidavit denying that the magistrate had jurisdiction, and the court held untenable an objection that no offence within the province had been shown. *Re* Bibby, 6 M. L. R. 472.

A conviction for keeping a house of ill-fame must name a place at which the offence was committed, and it is not sufficient to allege that the offence was committed at the city of Toronto, without further description of the particular locality, for the defendant might be keeping more than one house in the city at the same time, and the conviction should describe the place in such a way as by street and number, that the particular house could be easily identified. R. v. Cyr. 12 P. R. (Ont.) 24.

The general rule of law, respecting summary proceedings before justices of the peace, is that jurisdiction should be shewn on the face of the proceedings, and it matters not whether the question of jurisdiction turns upon the territorial authority of the magistrate or his power to investigate the particular offence. R. v. Walsh, 2 O. R. 206. See also *ex parte* Bradlaugh, L. R. 3 Q. B. D. 509.

The conviction must shew that the party convicted has brought himself within the terms of the law, in other words it must show the offence.

If only licensed tavern keepers are liable to a penalty for selling liquor without license, the conviction should show that the offender is licensed. McGilvery v. Gault, 1 Pugs. & Bur. 641.

The conviction should show that the defendant is within the description of persons against whom the law is directed. Thus, where a by-law 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, and whose name has not been duly entered on the assessment roll for the current year shall offer goods, wares and merchandize for sale within the limits of the town of M. without having a license," etc., it was held that the want of an allegation in the conviction that the defendant was a transient trader whose name had not been duly entered on the assessment roll for the current year was fatal. The statute authorized a by-law regulating transient traders for "temporary periods," and it was held that the words in the by-law "less than one year" were but a limitation of the words "temporary periods" used in the statute and the by-law was valid. R. v. Caton, 16 O. R. 11.

A by-law required "all hay sold at the market or elsewhere in the town of Cornwall, which is required to be weighed by the vendor or purchaser, to be weighed with public weigh scales." A conviction under this by-law was that defendant in contravention of said by-law, brought hay into said town and had same weighed on scales other than the public scales. The conviction was held bad in not stating that the hay was sold at the market or elsewhere in said town and costs were awarded to be paid by the complainant, the weigh-master, who had instituted the proceeding for his own benefit after warning instead of bringing an action in the Division Court. R. v. Hollister, 8 O. R. 750.

The facts which form the ground of the forfeiture should be stated in order that the court may see that the penalty has been properly imposed, and the description of the offence must contain in express terms every ingredient required by the Act or law on which the conviction is founded. Nadeau v. Corporation de Lévis, 16 Q. L. R. 210.

A conviction for leaving unclosed a gate on a pent road contrary to a regulation respecting gates on pent roads under a statute

making it punishable to leave unclosed any gate, ordered by the municipal council to be placed in any pent way, should show the order of the council as to placing the gate, otherwise it will be quashed. R. v. Cameron, 21 N. S. R. 382.

The description of the offence must include in express terms every ingredient required by the statute to constitute the offence, nothing being left to intendment, inference or argument. R. v. Turner, 4 B. & Ald. 510; Charles v. Greene, 13 Q. B. 216.

Where knowledge is made a material component in the offence it must be distinctly alleged. R. v. Jukes, 8 T. R. 536. Chaney v. Payne, 2 Q. B. 712.

Where written instruments form the gist of the offence, the conviction must set them out, that it may clearly appear that the instrument is one of the description contemplated by the statute.

When the statute under which the information is laid in describing the offence contains the words "maliciously," "wilfully," "knowingly," or words of similar import, the defendant should be stated, in the description of the offence, to have committed it maliciously, etc., as the case may be. Paley, 143.

The day on which the act was committed should be stated, but a conviction for selling liquor without a license on a certain day between the 31st July and the 1st September, in the same year, to wit, on the first day of August is sufficient, and it is not necessary to prove the exact day of sale. R. v. Justices, 2 Pugsley, 485.

So a conviction under "The Canada Temperance Act" alleging that the offence was committed between the 30th June and the 31st July, was held a sufficiently certain statement of the time. R. v. Wallace, 4 O. R. 127.

A conviction for keeping a house of ill-fame on the 11th of October, and on other days and times before that day, was held sufficiently certain as to time, for the only offence charged by these words was keeping and maintaining a bawdy-house, or house of ill-fame; and the fact that they kept such a house on the 11th of October, and other days and times before that, did not constitute a distinct offence against the parties upon each of those days. R. v. Williams, 37 Q. B. (Ont.) 540.

An information dated 25th August, charged an illegal sale of spirituous liquor "within three months last past." The conviction dated the 29th of the same month, adjudged the defendant guilty of the offence "within three months last past;" and the conviction was held bad, as it might have included a sale of liquor subsequent to the laying of the information. *Ex parte* Kennedy, 27 S. C. N. B. 493.

A person was convicted of being drunk on a public street, contrary to law, and adjudged to pay a fine of $50 and costs, or to be imprisoned for six months at hard labour. There was power given by by-law 478, of the city of Toronto, to imprison an offender for the above offence; but in the warrant of commitment no reference whatever was made to the by-law. It was held that as there was no common law right to imprison any one for being drunk on a public street, and the by-law not being referred to, the conviction was bad. *Re* Livingstone, 6 P. R. (Ont.) 17.

In Ontario under the 55 V. c. 42, s. 427, a conviction under a by-law need not set out the information, appearance or non-appearance of the defendant, or the evidence or by-law under which the conviction is made, but such conviction may be in the form given in such section. It seems, however, that the conviction should show by what municipality the by-law was passed. R. v. Osler, 32 Q. B. (Ont.) 324.

Where a form of conviction is not sanctioned by any statute, it must be legal according to the principles of the common law, and a conviction which did not express that the party had been summoned, nor that he appeared, nor that the evidence was given in his presence, cannot be supported. Moore v. Jarron, 9 Q. B. (Ont.) 233. But where the general form of conviction prescribed by this section is used, it is clearly not necessary to shew that the defendant was summoned or heard or any evidence given. R. v. Caister, 30 Q. B. (Ont.) 247.

The charge in a conviction must be certain, and so stated as to be pleadable in the event of a second prosecution for the same offence. R. v. Hoggard, 30 Q. B. (Ont.) 152.

A magistrate, in order to have a good justification under a conviction and warrant, must give in evidence a conviction not illegal

on the face of it, and a warrant of distress supported by that conviction, and not on the face of it, an illegal warrant. Eastman v. Reid, 6 Q. B. (Ont.) 611.

In describing the offence in convictions, it is not sufficient to state as the offence that which is only the legal result of certain facts, but the facts themselves must be specified, for instance, a conviction that the defendant used blasphemous language is not good, the exact words used should be set out in the conviction. *Re* Donelly, 20 C. P. (Ont.) 165.

A conviction which declares that the accused has been found guilty and at the same time acquits him is contradictory and illegal, and will be annulled on writ of *certiorari*. Cardinal v. City of Montreal, 6 Mont. S. C. 210.

Where a man is convicted on a statute or by-law creating an alternative offence and the same penalty is imposed in either case, the information and conviction must state which offence is intended to be charged. Thus where a by-law provided that "no smoke or steam shall be emitted from the engine so as to constitute any reasonable ground of complaint to the passengers *or* the public" and an information and conviction stated that the defendant permitted smoke to escape contrary to the by-law, without showing whether this afforded ground of complaint to the passengers *or* to the public, the conviction was quashed. Cotterill v. Lempriere, 24 Q. B. D. 634.

A conviction must not be in the alternative. R. v. Craig, 21 Q. B. (Ont.) 552. A conviction adjudging the defendant to be imprisoned for twenty-five days, *or* payment of $5 and costs in the alternative is bad. R. v. Saddler, 2 Chit. 519; R. v. Wortman, 4 Allen, 73; R. v. Pain, 7 D. & R. 678.

A conviction under the R. S. C. c. 168, s. 59, Code, s. 511, alleged in the very 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. The court held that this was not sufficient without its being alleged what the particular act was which was done by the defendant which constituted such damage, etc., and what the particular nature and

quality of the property, real and personal, was in and upon which such damage was committed. R. v. Spain, 18 O. R. 385.

In framing a conviction where it is immaterial by what means the act prohibited has been effected, it is in general sufficient to follow the words of the statute where it gives a particular description of the offence. But there are exceptions to this rule. Thus under the R. S. C. c. 157, s. 8, Code, s. 207, respecting Vagrants, a conviction of a common prostitute in the very words of the statute was holden insufficient, and that it should also shew a request made on the woman to give a satisfactory account of herself. R. v. Lévecque, 30 Q. B. (Ont.) 509. And where an Act, describing the offence, makes use of general terms which embrace a variety of circumstances, it is not enough to follow the words of the statute, but it is necessary to state what particular fact prohibited has been committed or the circumstances under which the act is an offence. *Re* Donelly, 20 C. P. (Ont.) 167; R. v. Scott, 4 B. & S. 368. When circumstances explanatory of the words of the statute are necessary to be shewn in order to bring the case within the statute, such circumstances must be plainly and distinctly averred. R. v. Wield, 6 East, 417; Fletcher v. Calthrop, 6 Q. B. 880. See also R. v. Pearham, 5 H. & N. 30.

One of several persons in partnership may be convicted of an offence committed by the firm, for all wrongs are several as well as joint. Mullins v. Bellamere, 7 L. C. J. 228. For a statutory illustration of this principle, see Code, s. 379, as to frauds by millers, factors, warehousemen, etc.

At common law a conviction cannot be amended. R. v. Jukes, 8 T. R. 625. The magistrate, however, before he returns it to the sessions or upon a *certiorari* may draw it up in a more formal manner than he had at first drawn it. Chaney v. Payne, 1 Q. B. 712; Charter v. Greame, 13 Q. B. 216.

If the commitment be bad upon the face of it, the party may apply for a *habeas corpus*, and thereupon be discharged. But a good commitment may be substituted for a bad one, on the return to the writ. R. v. Smith, 3 H. & N. 227. But if, instead of convicting the defendant, the justice refuse to convict him and dismiss the case, there is no mode of reviewing his decision, the court will

neither grant a *mandamus* requiring the magistrate to rehear the case nor award a *certiorari* to bring up the proceedings. *Ex parte* B. & F. P. I. Co., 7 Dowl. 614.

It may be observed that although a conviction may be drawn up in regular form, at any time before it is returned to sessions, an order or warrant of commitment cannot. R. v. Barker, 1 East, 186; R. v. Cheshire, 5 B. & Ad. 439; Hutchinson v. Lowndes, 4 B. & Ad. 118. Although a magistrate may draw up a conviction in a more formal manner than was done in the first instance, and may return the amended form, as his conviction, to the sessions or the Court of Queen's Bench upon a *certiorari*, or probably he may return an amended conviction to the sessions even after having returned an erroneous one. Selwood v. Mount, 9 C. & P. 75, yet he cannot do this after the first conviction has been quashed, either upon appeal or by the Court of Queen's Bench, or after the defendant has been discharged by the Court of Queen's Bench, by reason of a bad conviction being recited in the warrant of commitment. Chaney v. Payne, 10 L. J. M. C. 114.

After a first conviction has been returned to the sessions and filed, the justices may, if they think it defective, make out and file a second. Wilson v. Graybiel, 5 Q. B. (Ont.) 227.

A conviction for two several and distinct offences, but imposing one penalty only, is bad where it does not appear for which offence the penalty is inflicted. R. v. Gravelle, 10 O. R. 735.

A conviction for two offences is bad. Thus a conviction "for creating a disturbance and acting in a disorderly manner by fighting on the street, and breaking the peace contrary to the by-law and statute in that behalf," is defective. So if it impose imprisonment with hard labour in default of payment, it being uncertain whether it is made under the statute or by-law, and if the latter, hard labour being unauthorized. R. v. Washington, 46 Q. B. (Ont.) 221. And where a defendant was convicted before a magistrate for that he "did in or about the month of June, 1880, on various occassions," commit the offence charged in the information, and a fine was inflicted "for his said offence," the conviction was held bad as showing the commission of more than one offence. R. v. Clennan, 8 P. R. (Ont.) 418.

The 845th section of the statute, in limiting the information or complaint, to one offence or matter of complaint, also limits the conviction to one offence, save where the contrary is provided by a subsequent statute. In all cases then, the wording of the statute creating the offence is to be carefully considered, in order to determine whether distinct penalties are incurred for each of the several acts charged, or whether they form but one aggregate offence, and require but one penalty. See Collins v. Hopwood, 15 M. & W. 459. But of late years the distinction formerly recognized as existing between joint and several offences has been done away with, and the courts treat all persons committing an offence together, as liable each to the full penalty imposed by the statute on the person committing such offence, so that in all such cases it is the better plan to have an information and summary case for each person charged. Mayhew v. Wordley, 14 C. B. N. S. 550; Kerr's Acts, 197.

The omission of the words "for his said offence" from the part of the conviction adjudging the penalty for selling liquor contrary to the "Canada Temperance Act" does not render the conviction invalid though they are in the form VV. At most the omission is a defect of form and the conviction may be amended under ss. 117 and 118 of the Act. *Ex parte* Laughey, 28 S. C. N. B. 656.

The name of the informant or complainant must in some form or other appear on the face of the conviction. *Re* Hennesy, 8 U. C. L. J. 299. The costs are generally directed to be paid to him by name.

The offence of which the defendant is convicted must be stated with certainty, otherwise the conviction will be quashed. Eastman v. Reid, 6 Q. B. (Ont.) 611.

To sustain a conviction, the evidence must be reasonably sufficient to show that the offence existed, and was committed at the time of the information, and the facts necessary to support the charge must be stated expressly and not left to be gathered from inference or intendment. Therefore where a conviction, under "The Canada Temperance Act," made on the 4th of August, stated that the defendant had sold spirituous liquors "within three months now last past," referring to the date of the conviction, and the evi-

dence of one witness proved a sale in May previous to the information which was laid on the 25th July, and another witness proved a sale "since the 22nd June," which sale might have been after the date of the information, the conviction was held to be uncertain as it was consistent with the evidence that the magistrate might have convicted, on the testimony of the witness who proved a sale "since the 22nd June," which sale might have been after the date of the information. R. v. Blair, 24 S. C. N. B. 72-4.

Before conviction the justice should have reasonable evidence. In a prosecution under "The Canada Temperance Act," the defendant swore that he did not sell any intoxicating liquor on the day charged. The recipient of some liquor sold on that day named it in his evidence for the defence, but there was no evidence that it was intoxicating drink, the evidence for the crown only showing that it resembled intoxicating liquor, and it was held that there was no reasonable evidence on which to found a conviction for selling intoxicating liquor. R. v. Bennett, 1 O. R. 445.

In the adjudication the justice should measure the penalty he inflicts by his authority under the statute inflicting the penalty for the offence of which he convicts the defendant. If the penalty is a sum certain, the defendant should be adjudged to forfeit and pay that sum certain. *Ex parte* Wilson, 1 Pugs. & Bur. 274.

If, on the other hand, the statute in such case gives the justice the power of inflicting a penalty, of not more, for instance, than ten dollars and not less than one dollar, the justice, if he convicts, should impose a penalty of either of these sums, or of any sum between them. But if he imposes a penalty either greater than the higher or less than the lower limit, the conviction is bad. R. v. Patchett, 5 East, 341. See also Brophy v. Ward, 32 L. J. Q. B. 292.

Whatever is provided as the punishment by the statute must appear in the conviction. Thus if on non-payment of the penalty, imprisonment at hard labour is imposed by the statute, the conviction must direct such or it will be bad. R. v. McKenzie, 23 N. S. R. 6-20. So the imposition of a larger penalty than authorized by the statute is illegal. R. v. Porter, 20 N. S. R. 352.

But a conviction cannot be quashed on the ground that the punishment imposed is less than that assigned by law to the offence. Code, s. 890 (*b*).

Where the statute on which the conviction is made only authorizes imprisonment on default of payment of the fine, the conviction will be invalid if it awards a distress on non-payment and in default of sufficient distress, imprisonment. The specific punishment for non-payment of the penalty being imprisonment, the award of distress is in excess of that which might have been lawfully imposed, and sections 889 and 890 of this Act do not cure the defect. R. v. Lynch, 12 O. R. 372.

In such a case as the above, the form WW should be used instead of the form VV. Under "The Public Works Act," R. S. C. c. 36, s. 30, all pecuniary penalties imposed by the Act shall be recoverable with costs before any justice of the peace for the district in which the offence was committed, and in default of payment of the penalty and sufficient distress the party may be imprisoned for such term as the justice directs, not exceeding thirty days. There is a similar provision in the Act respecting the Department of Railways and Canals, R. S. C. c. 37, s. 20, in respect to penalties imposed by the latter Act. Convictions under these Acts should, therefore, be in the form WW.

The minute of adjudication required to be drawn up by this section is in order that the adjudication and conviction should correspond, and when the Act or law in that behalf gives no mode of raising or levying the penalty the procedure must, under the 872nd section of the Code be by warrant of distress, and in default of sufficient distress, imprisonment. In a case under the "Canada Temperance Act," which provides no means of enforcing payment of the penalty for the first offence, the adjudication found the defendant guilty of keeping intoxicating liquors contrary to the provisions of the second part of the Act, and that a fine of fifty dollars should be paid, and in default the defendant be imprisoned in the common gaol for thirty days, and the conviction following the adjudication directed distress in the event of non-payment of the penalty, and in default of sufficient distress, imprisonment, the court held that the conviction could not be supported, but that the magistrate

might have amended the adjudication in the presence of the defendant. It appearing, however, that the offence was one against the provisions of the Act, and was within the jurisdiction of the magistrate, and that there was evidence to prove it, and that no greater penalty was imposed than authorized by the Act, the court under the 117th and 118th sections of the Canada Temperance Act, amended the minutes of conviction by striking out the award of imprisonment in default of payment of the penalty, and by inserting an award of distress on non-payment, and on default of sufficient distress, imprisonment. R. v. Brady, 12 O. R. 358.

There is no form given in the Act for such minute or memorandum, but the entire adjudication both as to fine, costs and mode of enforcing payment thereof must take place while the justice is sitting in court on the case, and the minute of conviction made under this section, should state the adjudication of the justice, both as to the amount of fine and the mode of enforcing it, whether by distress or imprisonment, so as to be a complete judgment in substance. R. v. Perley, 25 S. C. N. B. 43. It will not do for the justice, while sitting, to fix the penalty only, and after delivery of judgment and departure from the court in the absence of the defendant, to direct distress, imprisonment, etc. Immediately after conviction the defendant has a right to the minute of adjudication. The statute requires that it shall then be made. A record should be kept of this and signed by the justice. If the conviction is for a penalty, the adjudication may be thus stated: "Convicted to pay penalty, $5; damage (or value), $1; and costs, $3; forthwith (or on or before the instant), to be recovered by distress, and in default, one month's imprisonment at hard labour unless sooner paid with costs of distress and conveyance to gaol." Although the conviction itself may afterwards be drawn up, the minute or memorandum with full particulars must be drawn up and signed before the justice leaves the bench.

In *ex parte* Melanson, 28 S. C. N. B. 660, the court followed the foregoing case in holding that a conviction which directed imprisonment in default of payment of fine and costs was bad because it varied from the minute of conviction which adjudged the

defendant to pay a fine and costs forthwith, without saying anything about imprisonment.

A minute of a conviction for selling liquor without a license, in contravention of s. 70 of the R. S. O. c. 194, stated that in default of payment of the fine and costs imposed, the same was to be levied by distress, and, in default of distress, imprisonment for three months. The section on which the conviction took place did not authorize distress but only imprisonment on default in payment, and the court held that the fact of the minute directing distress did not prevent the justice from drawing up and returning in answer to a *certiorari* a conviction omitting the provision as to distress. This being done, the amended conviction was held good under s. 105 of the R. S. O. c. 194. R. v. Hartley, 20 O. R. 481. See also R. v. Richardson, 20 O. R. 514. R. v. Southwick, 21 O. R. 670.

Where the adjudication and minute of conviction for selling liquor contrary to "The Canada Temperance Act" did not award distress but provided for imprisonment only in default of payment of fine and costs, and the conviction awarded distress in default of payment, and, in the absence of sufficient distress, imprisonment, the conviction was quashed. R. v. Higgins, 18 O. R. 148; see also R. v. Brady, 12 O. R. 358-360. But in R. v. Hartley, 20 O. R. 481, the court came to the conclusion that the two cases of R. v. Higgins and R. v. Brady, *supra*, should not be followed so far as they were in conflict with R. v. Hartley. In R. v. Brady, the conviction contained a provision which was not in the adjudication, while in R. v. Hartley the adjudication contained a provision which was not in the conviction. And that which was in the adjudication and not in the conviction was something which the magistrate had no power to deal with and was an act beyond their jurisdiction and should not have been dealt with. Where, however, the magistrate has exercised his judgment or discretion, and has nominated the fine and fixed the term of imprisonment, both being within his discretion, it would seem that the formal conviction must follow the adjudication, because it must be in accordance with the fact, and the fact is as shown by the minute of conviction. In such case, in order to vary the fine or imprisonment, it would be neces-

sary to have a new adjudication, which could only be changed by the magistrate in the presence of the defendant, such change being in effect a new judgment. See R. v. Hartley, 20 O. R. 485, *per* Rose, J. See also R. v. Menary, 19 O. R. 691.

Where the adjudication did not provide for distress but directed imprisonment in default of payment of the fine and costs, it was held that a conviction could not be made directing distress and on default imprisonment, and that a conviction which did not follow the adjudication was invalid. R. v. Cantillon, 19 O. R. 197.

The minute of conviction under this section need not state the amount of the costs where costs are awarded. Unless the defendant requires it for the purpose of payment, it is sufficient that the amount is stated in the conviction. *Ex parte* Porter, 28 S. C. N. B. 587.

The conviction must adjudge a forfeiture of the penalty. See R. v. Newton, 11 P. R. (Ont.) 98.

A conviction for keeping a house of ill-fame is defective if it does not contain an adjudication of forfeiture of the fine imposed, and it is not sufficient to adjudge the payment of a sum of money without adjudging a forfeiture thereof. R. v. Cyr, 12 P. R. (Ont.) 24.

It would seem that a conviction by a justice may be quashed unless it is sealed. Haacke v. Adamson, 14 C. P. (Ont.) 201; McDonald v. Stuckey, 31 Q. B. (Ont.) 577; Bond v. Conmee, 16 A. R. 398; 15 O. R. 716.

All exceptions contained in the enacting clause of a statute should be negatived in the conviction. For instance, if a statute imposes a penalty for selling liquor without license except upon a requisition for medicinal purposes, the absence of such requisition should be shewn. R. v. White, 21 C. P. (Ont.) 354.

This rule, however, applies only where the exception is contained in the same section of the statute as that constituting the offence, and where the exception is in a different subsequent section it need not be negatived in the conviction. R. v. Breen, 36 Q. B. (Ont.) 84, even where the exception in such subsequent section is incorporated by reference with the enacting clause, for the

reference must be in the enacting clause itself and not to it. See also R. v. Strachan, 20 C. P. (Ont.) 182.

Where the exception is not in the enacting clause it need not be negatived. A by-law declared that "no person shall in any of the streets, or in the market-place of the city of London, blow any horn, ring any bell, beat any drum, play any flute, pipe or other musical instrument, or shout or make or assist in making any unusual noise or noise calculated to disturb the inhabitants of the said city, provided always that nothing herein contained shall prevent the playing of musical instruments, by any military band of Her Majesty's regular army, or of any militia corps lawfully organized under the laws of Canada." On application to quash a conviction for beating a drum, it was held not necessary that either the conviction or commitment should shew that the defendant did not come within the exception in the proviso. R. v. Nunn, 10 P. R. (Ont.) 395.

The rule is that all circumstances of exemption or modification, whether applying to the offence or to the person, that are either originally introduced into or incorporated by reference with the enacting clause, must be distinctly enumerated and negatived. Therefore, where a statute declared certain Acts committed by "any person not legally empowered . . . without the owner's permission" to be unlawful, a conviction not negativing the power and permission was held bad. R. v. Morgan, 5 M. L. R. 63.

And these rules are not of the same importance as formerly, for the conviction cannot be quashed for non-observance of them. See Code, s. 890.

This 859th section of the Act relates to orders generally, and is not confined to orders for the payment of money and those of a like kind. See Morant v. Taylor, L. R. 1 Ex. D. 188.

It is not necessary that an order of justices should be sealed with wax; an impression made in ink with a wooden block, in the usual place of a seal is sufficient, when the document purports to be given under the hands and seals of the justices, and is in fact signed and delivered by them. R. v. St. Paul, 7 Q. B. 232.

Justices may supersede their own order when improvidently made. R. v. Norfolk, 1 D. & R. 69. If two orders are made by mistake at the sitting of magistrates, it is competent to them to declare at the time which is the right one. Wilkins v. Hemsworth, 7 A. & E. 807.

No order can be made in the absence of the party whose interests are affected by it. R. v. Totness, 14 L. J. M. C. 148.

An order may be good in part and void for the residue. R. v. Fox, 6 T. R. 148. An order of justices bad in part may be enforced as to the good part, provided that on the face of the order the two parts are clearly separable, and it is not necessary in such case to quash the bad part of the order before enforcing the residue. R. v. Green, 20 L. J. M. C. 168.

The signature is an essential part of the order, and the order cannot be considered as made until it is reduced into writing and signed by the justice. R. v. Flintshire, 10 Jur. 475.

It must expressly appear on the face of the order that the justices had jurisdiction to make it, and the facts raising such jurisdiction should be shown or it will be bad. R. v. Treasurer Co. Kent, 16 Cox, 583; R. v. Hulcott, 6 T. R. 587. But the court will make every reasonable intendment in favour of an order of justices. R. v. Aire, 2 T. R. 666.

Justices out of sessions are in many cases required to make orders in matters not criminal, but this jurisdiction must be given either by the express words of some statute, or by necessary implication from them. An order of justices consists of three parts; the first recites the facts which, according to the statute on which the order is framed, give the justice jurisdiction to make it; the second states the appearance, hearing and finding; and the last, the adjudication and order. Great care must be taken with the part of the order reciting the facts which give the jurisdiction, for it is essential that the order show upon the face of it that the justices had jurisdiction to make it, otherwise it will be bad. R. v. Spackman, 2 Q. B. 301; or if in fact the justices had not jurisdiction, although it be represented on the face of the order that they had—the order may be impugned upon affidavit and quashed,

although it appear good on the face of it. R. v. Bolton, 1 Q. B. 66. An order may be good in part and bad in the rest. R. v. Over, 14 Q. B. 425. It must appear also that the person upon whom the order was made, either was present at the hearing, or was summoned in order to show that he had an opportunity of resisting the order if he objected to it, unless indeed the order be intended by the statute to be *ex parte*, and be made upon the application of the party to whom it is to be directed.

In the last part the only care requisite is, that the matter of complaint be adjudged to be true. R. v. Williams, 21 L. J. M. C. 150; and that the order be strictly such as is warranted by the statute. Where an order of a justice or justices legally made, requires a person to do any certain act, and, upon being personally served with the order and required to do the act, he refuse or neglect to do it, this is a misdemeanour at common law, punishable upon indictment by fine or imprisonment or both. R. v. Bidwell, 17 L. J. M. C. 99; R. v. Ferrall, 20 L. J. M. C. 39; R. v. Walker, L. R. 10 Q. B. 355.

A person who has been fined for disobedience to an order for the vaccination of his child cannot, though he is guilty of a continuing offence from day to day, be again fined for disobedience to the same order. R. v. Justices, Portsmouth, L. R. 1 Q. B. 491 (1892).

A defendant who has been convicted is not entitled of right to a copy of the conviction, to enable him to appeal against it. R. v. Huntingdon, 5 D. & R. 588. He is, however, under this 859th section, entitled to a minute, or memorandum of the conviction, without any fee, and if he wants the copy of conviction for purposes of defence in any action, a justice who refuses it may have to pay the costs of a *certiorari* to obtain it. R. v. Huntingdon, *supra*. A copy given to the defendant will not be binding, since the justices may draw it up in an amended form any time before a return to a *certiorari*, though after a commitment or distress, and after return to the sessions. R. v. Richards, 5 Q. B. 926; R. v. Johnson, 3 B. & S. 947.

A justice is liable to an action if he prevent, by undue delay and after notice, the defendant from prosecuting his appeal.

Prosser v. Hyde, 1 T. R. 414. See McKenzie v. McKay, 3 Russ. & Geld. 122.

The blanks in the conviction should be filled up before signature. Bott v. Ackroyd, 28 L. J. M. C. 207. But if not so filled up it will be a mere irregularity.

860. When several persons join in the commission of the same offence, and upon conviction thereof each is adjudged to pay a penalty which includes the value of the property or the amount of the injury done, no further sum shall be paid to the person aggrieved than such amount or value, and costs, if any, and the residue of the penalties imposed shall be applied in the same manner as other penalties imposed by a justice are directed to be applied. R. S. C. c. 178, s. 54.

A conviction of two persons in partnership for an offence, several in its nature, and adjudging that they should forfeit and pay, etc., is bad, for a joint conviction in such case is bad; the penalty ought to be imposed on the parties severally. *Ex parte* Howard, 25 S. C. N. B. 191.

A conviction will be bad if it directs that each of two defendants pay half the fine and costs, and that in default of payment or sufficient distress the defendants be imprisoned. In such a case one of the defendants having paid his share of the fine and costs might be imprisoned for the other's default, and sections 889 and 890 of the Code do not cure the defect. R. v. Ambrose, 16 O. R. 251.

The defendants E. R. and H. R., his wife, were jointly convicted 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 and $22.46 for costs, and in default to be imprisoned. The court held that the offence was single in its nature, and only one penalty could be awarded, but it ought to be several against each defendant, otherwise one who had paid his proportional part might be continued in prison until the other had paid the residue. *In re* Rice, 20 N. S. R. 294.

861. Whenever any person is summarily convicted before a justice of any offence against Parts XX. to XXX. inclusive or Part XXXVII. of this Act and it is a first conviction, the justice may, if he thinks fit, discharge the offender from his

conviction upon his making such satisfaction to the person aggrieved, for damages and costs, or either of them, as are ascertained by the justice. R. S. C. c. 178, s. 55.

See as to power to award costs, Code, s. 867. See also s. 832.

Section 836 of the Code enables the court, on the trial of any person, to award any sum of money, not exceeding one thousand dollars by way of compensation, and section 837 provides for compensation to the *bona fide* purchaser of stolen peoperty, while section 838 provides for the restoration of stolen property to the owner thereof.

862. If the justice dismisses the information or complaint, he may, when required so to do, make an order of dismissal in the form BBB in schedule one hereto, and he shall give the defendant a certificate in the form CCC in the said schedule, which certificate, upon being afterwards produced shall, without further proof, be a bar to any subsequent information or complaint for the same matter, against the same defendant. R. S. C. c. 178, s. 56.

It would seem this section relates to the proof of the previous dismissal, for independently of the certificate, the dismissal would be a bar if properly proved. R. v. Brakenridge, 48 J. P. 293.

Owing to the special wording of form BBB, this certificate would be a bar, even when the order of dismissal is made, because the informant does not appear, or appearing, declines to give evidence. It is not necessary that there should be an actual hearing and dismissal on the merits. See *Ex parte* Phillips, 24 S. C. N. B. 119.

In the case under consideration, the majority of the court held that the magistrate, before whom an information for an offence is being heard, if a certificate of dismissal of a prosecution for the same alleged offence is relied on, as a bar to his proceeding, has a right to enquire whether the previous prosecution was real and *bona fide*, or was instituted fraudulently and collusively.

Independently of this provision, a former conviction or acquittal, whether on a criminal summary proceeding or an indictment, will be an answer to an information of a criminal nature before justices, founded on the same facts. The true test to shew that such previous conviction or acquittal is a bar, is whether the evidence necessary to support the second proceeding would have been suffi-

cient to procure a legal conviction on the first. See Wemyss v. Hopkins, L. R. 10 Q. B. 378.

If, however, by reason of some defect in the record, either in the indictment, place of trial, process, or the like, the accused was not lawfully liable to suffer judgment for the offence charged, the former proceeding will be no bar. The previous proceeding, if used as an answer, should have been a decision on the merits, and not in the nature of a mere non-suit. R. v. Herrington, 12 W. R. 420; R. v. Machen, 14 Q. B. 74.

The objection of *res judicata* must be taken at the hearing before the magistrate, and not reserved as a ground for quashing the conviction or order after it is made. *Ib.*

863. Whenever, by any Act or law, authority is given to commit a person to prison, or to levy any sum upon his goods or chattels by distress, for not obeying an order of a justice, the defendant shall be served with a copy of the minute of the order before any warrant of commitment or of distress is issued in that behalf; and the order or minute shall not form any part of the warrant of commitment or of distress. R. S. C. c. 178, s. 57.

This section only requires that a minute should be served in case of an order. The defendant must take notice of a conviction at his peril, and the costs directed to be paid in a conviction are really part of the conviction, where there is a conviction, or of the order, where there is an order; for the 867th section of the Act empowers the justice to award costs on either convictions or orders. R. v. Sanderson, 12 O. R. 178.

As the section applies to orders, and not convictions, on conviction of a party for unlawful assault, under section 864 of the Code, it is not necessary that he should be served with a copy of the minutes of the conviction before he is imprisoned. R. v. O'Leary, 3 Pugsley, 264. See also McLellan v. McKinnon, 1 O. R. 219.

864. Whenever any person unlawfully assaults or beats any other person, any justice may summarily hear and determine the charge, unless at the time of entering upon the investigation the person aggrieved or the person accused objects thereto.

2. If such justice is of opinion that the assault or battery complained of is, from any other circumstance, a fit subject for prosecution by indictment, he shall

abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as if he had no authority finally to hear and determine the same. R. S. C. c. 178, s. 73.

On the hearing of a charge of assault, under this section, if it be shewn that a *bona fide* question as to the title to land is involved, the jurisdiction of the justice is at once ousted and the justice cannot proceed to enquire into and determine by summary conviction any excess of force alleged to have been used in the assertion of title. R. v. Pearson, L. R. 5 Q. B. 237.

This section alters the law. Formerly, to give jurisdiction it was necessary that the person aggrieved should request the magistrate to proceed summarily; now, either the accused or the person aggrieved may prevent a hearing. The conviction for assault bars any civil remedy. See section 866. And it is therefore deemed just to give the person assaulted control over the proceedings under this section. He has a right to elect between the civil and the criminal remedy. But has the person aggrieved a right after laying the information to object to a hearing by the magistrate? It was held under the former Act that a complaint which prayed the magistrate to proceed summarily could not be withdrawn even with the consent of the justice. *Re* Conklin, 31 Q. B. (Ont.) 160.

It would seem that it is only the justice, who issues the summons, who has jurisdiction to dispose of the matter, the words "such justice," in sub-section 2, referring to the justice before whom the information is laid. See R. v. Bernard, 4 C. R. 603.

A justice of the peace has no jurisdiction to try an assault summarily, unless it is given him by statute; R. v. O'Leary, 3 Pugsley, 264; *Re* Switzer, 9 U. C. L. J. 266, and he must strictly pursue the authority given. See R. v. Shaw, 23 Q. B. (Ont.) 616.

A conviction for an unlawful assault may adjudge defendant to be imprisoned in the first instance, under this statute. R. v. O'Leary, 13 C. L. J. N. S. 133; 3 Pugsley, 264.

It is probable that the statute only applies to common assaults. At all events, the opinion of Mr. Justice Wilson, in reference to the C. S. C. c. 91, s. 37, was that this statute only applied to

common assaults; and the only substantial difference between the statutes is, that the 44th section of the consolidated statute spoke of a common assault. *Re* McKinnon, 2 U. C. L. J. N. S. 324.

865. If the justice, upon the hearing of any case of assault or battery upon the merits where the complaint is preferred by or on behalf of the person aggrieved, under the next preceding section, deems the offence not to be proved, or finds the assault or battery to have been justified, or so trifling as not to merit any punishment, and accordingly dismisses the complaint, he shall forthwith make out a certificate under his hand stating the fact of such dismissal, and shall deliver such certificate to the person against whom the complaint was preferred. R. S. C. c. 178, s. 74.

A certificate of dismissal of a charge of assault will bar an action founded on the same facts, for tearing the plaintiff's clothes on the same occasion. Julien v. King, 17 L. C. R. 268.

A conviction for an assault on the wife, and a certificate under this section, has been held in England to bar a civil action for damages by husband and wife, in respect of the same assault, though the complaint before the magistrate was by the wife alone. Masper v. Brown, L. R. 1 C. P. D. 97.

Though a party is convicted of an assault on a charge of assault under the Act, and obtains a certificate under this 865th section, he may afterwards be indicted for manslaughter, should the party die from the effects of the assault. R. v. Morris, L. R. 1 C. C. R. 90. But a charge of assault and battery accompanied by a malicious cutting and wounding, so as to cause grievous bodily harm, would be barred by a certificate of acquittal of assault and battery on the same facts. *Re* Conklin, 31 Q. B. (Ont.) 165. So the conviction would bar an indictment for felonious stabbing; R. v. Walker, 2 M. & Rob. 446; or an assault with intent to commit a rape. *Re* Thompson, 6 H. & N. 193.

Under the statute the justice has a discretion to abstain from adjudicating, and he may exercise this discretion and abstain from adjudicating, though the defendant pleads guilty. *Re* Conklin, 31 Q. B. (Ont.) 160.

It would seem that the certificate under this section must be obtained from the convicting justice, on the first hearing of the

case, and that it cannot be granted by the Sessions on quashing a conviction for an assault after an appeal to them. Westbrook v. Calaghan, 12 C. P. (Ont.) 616.

The granting of the certificate is a ministerial, not a judicial act, and it is therefore imperative on the justice who has dismissed the cause on the grounds stated, to grant this certificate if applied for, and he has no discretion to refuse it, and the certificate has been held to be properly granted after the lapse of seven days. Hancock v. Somes, 28 L. J. M. C. 278.

The word "forthwith" in this section means a reasonable time, and five days, though not two months, will suffice. *Ib.* R. v. Robinson, 12 A. & E. 672.

"Forthwith" means after the application for the certificate and not after the dismissal of the complaint. Costar v. Hetherington, 8 Cox, 175.

Where a magistrate having no jurisdiction to hear an information under the Act allows it to be withdrawn by the prosecutor on the return of the summons, the defendant not being present, he is not entitled to a certificate of dismissal, for there is no adjudication. *Ex parte* Case, 28 S. C. N. B. 652.

The certificate can only be granted where there has been a hearing "upon the merits," and both parties have attended before the magistrate and there has been a proper inquiry into the facts of the case. Where, therefore, a prosecutor gave notice to a person against whom he had obtained a summons for an assault that he should not attend before the magistrate or offer evidence in support of the summons and did not, in fact attend or offer evidence but the person charged attended and obtained from the magistrate a certificate of dismissal under the above section, it was held that there had not been a hearing upon the merits, and that the magistrate had no jurisdiction to grant the certificate, and that the latter was, therefore, no bar to a subsequent action in which the validity of the certificate might be enquired into. Reed v. Nutt, 24 Q. B. D. 669. See also *Re* Conklin, 31 Q. B. (Ont.) 160; Bradshaw v. Vaughton, 30 L. J. C. P. 93.

It is probable that the form of certificate CCC, given in the schedule to this Act would apply to this case.

The following form is in use in England:—

Whereas A. B., of , in the County of , labourer, heretofore on the day of , in the year of our Lord , came before me, one of Her Majesty's Justices of the Peace for the said County of , and complained to and informed me that C. D., of , in the County aforesaid, labourer, on at , did unlawfully assault and beat him, the said A. B., and whereas the said C. D., being duly summoned to answer the said charge, appeared before me, one of Her Majesty's Justices of the Peace for the County aforesaid, at , and the said A. B., also then and there attended before me for the purpose of proving the offence charged upon the said C. D., in and by the said complaint; and I, the said Justice, do hereby certify that having heard the said case upon the merits, and it manifestly appearing to me ("that the said offence was not proved" *or* "that the said C. D. was lawfully justified in the committing of the assault and battery charged upon him in and by the said complaint," *or* "that the assault and battery proved was so trifling as not to merit any punishment,") I thereupon then and there dismissed the said complaint.

Given under my hand, the of in the year of our Lord

E. F.

866. If the person against whom any such complaint has been preferred, by or on the behalf of the person aggrieved, obtains such certificate, or, having been convicted, pays the whole amount adjudged to be paid or suffers the imprisonment, or imprisonment with hard labour, awarded, he shall be released from all further or other proceedings, civil or criminal, for the same cause. R. S. C. c. 178, s. 75.

See also Code, s. 969.

A conviction before a magistrate can only be proved by the production of the record of conviction, or an examined copy of it. Therefore, where a magistrate, in a case of common assault ordered the accused to enter into recognizances and pay the fee, but did not order him to be imprisoned or to pay any fine, and an action having been subsequently brought, it was held that the above was not a conviction within the meaning of this section, and was not a bar to the action, and also that the conviction, if any, was not proved. Hartley v. Hindmarsh, L. R. 1 C. P. 553.

Where an assault charged in an indictment, and that referred to in a certificate of dismissal, appear to have been on the same day, it is *prima facie* evidence that they are one and the same assault, and it is incumbent on the prosecutor to shew that a second assault occurred on the same day, if he alleges it.

The recital in the certificate of the fact of a complaint having been made, and of a summons having been issued, is sufficient evidence of those facts. R. v. Westley, 11 Cox, 139.

867. In every case of a summary conviction, or of an order made by a justice, such justice may, in his discretion, award and order in and by the conviction or order that the defendant shall pay to the prosecutor or complainant such costs as to the said justice seem reasonable in that behalf, and not inconsistent with the fees established by law to be taken on proceedings had by and before justices. R. S. C. c. 178, s. 58.

A conviction adjudging the defendant to pay a sum for costs, without saying to whom the costs are to be paid, is void under this section. The conviction should order the costs to be paid to the complainant. R. v. Mabey, 37 Q. B. (Ont.) 248.

A conviction is bad which makes the costs payable in the alternative to the prosecutor or the magistrate. R. v. Washington, 46 Q. B. (Ont.) 221.

The costs of an appeal are to be paid to the clerk of the peace or other proper officer of the court. Code, s. 897.

In *ex parte* Wallace, 29 S. C. N. B. 123, the majority of the court held that the penalty and costs adjudged to be paid by a conviction, must be paid to the convicting justice and not to the prosecutor, and that this section does not mean a payment direct to the prosecutor but through the magistrate. In this case the defendant had been convicted under "The Canada Temperance Act" and adjudged to pay a penalty and costs. A distress warrant had been issued and returned, and a warrant of commitment then issued, when the defendant paid both the penalty and costs to the prosecutor, and it was held this did not prevent the execution of the warrant of commitment. It is submitted, however, that under a conviction in the forms VV or WW the costs may be paid to the prosecutor, but the penalty should be paid to the convicting justice.

Although the statute on which a conviction takes place provides that no proceeding shall be quashed for want of form or any defect which does not substantially affect the justice of the case, the conviction will be invalid if it imposes costs in excess of those warranted by the act. And it will not make any difference that

the maximum fine or penalty has not been imposed. *Re* Bibby, 6 M. L. R. 472.

Where a statute authorizes a justice to award costs and does not fix any tariff, the justice may allow such costs as he may consider reasonable. R. v. Starkey, 7 M. L. R. 489.

Where the costs imposed by a conviction included a share of the expense of bringing the prosecutor as a witness from a distance, it was held that the conviction was thereby vitiated. R. v. Grannis, 5 M. L. R. 153.

Under this section justices are authorized to allow witness fees. R. v. Becker, 20 O. R. 676.

Where the fees to witnesses are not established by law, such are to be allowed as to the justice seems reasonable. And where in a conviction under "The Canada Temperance Act," the magistrate ordered the defendant to pay $3 as inspector's fee, $2 for an interpreter, and $1 for justices' costs, it was held that the interpreter might be treated as a witness and the conviction was valid. R. v. Brown, 16 O. R. 41. It was further held that the award of costs was within the jurisdiction of the magistrate, and *certiorari* being taken away in that case by section 889 of the Code, the erroneous allowance of certain items of costs would not warrant the quashing of the conviction. *Ib.*

868. Whenever the justice, instead of convicting or making an order, dismisses the information or complaint, he may, in his discretion, in and by his order of dismissal, award and order that the prosecutor or complainant shall pay to the defendant such costs as to the said justice seem reasonable and consistent with law. R. S. C. c. 178, s. 59.

A justice had power to grant costs on dismissing an information heard before him under "The Summary Convictions Act." C. S. C. c. 62, s. 16; *ex parte* Ross, 2 Pugs. & Burb. 337; *ex parte* Beattie, 5 Allen, 377, overruled.

Before this enactment the party could not be punished for non-payment of costs in the same way as for non-payment of penalty. R. v. Burton, 13 Q. B. 389.

A warrant of commitment for non-payment of penalty and costs, where the conviction did not mention costs, would be illegal. Leary v. Patrick, 15 Q. B. 206.

869. The sums so allowed for costs shall, in all cases, be specified in the conviction or order, or order of dismissal, and the same shall be recoverable in the same manner and under the same warrants as any penalty, adjudged to be paid by the conviction or order, is to be recovered. R. S. C. c. 178, s. 60.

As to recovery of penalties, see Code, s. 872 and notes thereon.

In a conviction for a penalty to be levied by distress, and in default of sufficient distress, imprisonment, it is no objection that the conviction specifies the amount of costs of conveying the party to gaol in default of sufficient distress; specifying the amount is only a notification to the defendant what he shall have to pay in the event of no distress and he is arrested. Reid v. McWhinne, 27 Q. B. (Ont.) 289.

870. Whenever there is no such penalty to be recovered such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of distress by imprisonment, with or without hard labour, for any term not exceeding one month. R. S. C. c. 178, s. 61.

871. The fees mentioned in the following tariff and no others shall be and constitute the fees to be taken on proceedings before justices in proceedings under this part:—

Fees to be taken by justices of the peace or their clerks.

	$ cts.
1. Information or complaint and warrant or summons	0 50
2. Warrant where summons issued in first instance	0 10
3. Each necessary copy of summons or warrant	0 10
4. Each summons or warrant to or for a witness or witnesses. (Only one summons on each side to be charged for in each case, which may contain any number of names. If the justice of the case requires it, additional summonses shall be issued without charge)	0 10
5. Information for warrant for witness and warrant	0 50
6. Each necessary copy of summons or warrant for witness	0 10
7. For every recognizance	0 25
8. For hearing and determining case	0 50
9. If case lasts over two hours	1 00
10. Where one justice alone cannot lawfully hear and determine the case, the same fee for hearing and determining to be allowed to the associate justice.	
11. For each warrant of distress or commitment	0 25
12. For making up record of conviction or order where the same is ordered to be returned to sessions or on *certiorari*	1 00
But in all cases which admit of a summary proceeding before a single justice and wherein no higher penalty than $20 can be imposed, there shall be charged for the record of conviction not more than	0 50

13. For copy of any other paper connected with any case, and the minutes of the same if demanded, *per* folio of 100 words 0 05
14. For every bill of costs when demanded to be made out in detail 0 10
(Items 13 and 14 to be chargeable only when there has been an adjudication.)

Constables' Fees.

1. Arrest of each individual upon a warrant 1 00
2. Serving summons 0 25
3. Mileage to serve summons or warrant, *per* mile (one way) necessarily travelled 0 10
4. Same mileage when service cannot be effected, but only upon proof of due diligence.
5. Mileage taking prisoner to gaol, exclusive of disbursements necessarily expended in his conveyance 0 10
7. Attending justices on trial in one or more cases, *per* hour 0 25
8. Mileage travelled to attend trial (when public conveyance can be taken only reasonable disbursements to be allowed) one way *per* mile 0 10
9. Serving warrant of distress and returning same 1 00
10. Advertising under warrant of distress 1 00
11. Travelling to make distress or to search for goods to make distress, when no goods are found (one way) *per* mile 0 10
12. Appraisements, whether by one appraiser or more, 2 cents in the dollar on the value of the goods.
13. Commission on sale and delivery of goods, 5 cents in the dollar on the net produce of the goods. 52 V. c. 45, s. 2 and Sch.

Witnesses' Fees.

1. Each day attending trial 0 75
2. Mileage travelled to attend trial (one way) *per* mile 0 10

Two informations were laid against one Laird at Broadview for having liquor in his possession and for selling the same without the permission in writing of the Lieutenant-Governor. The magistrates dismissed both informations with costs and the orders of dismissal awarded as costs the following amongst other items, viz: Rent of hall, $1.00; counsel fee, $37; compensation for wages, $14.80, and railway fare, $10.50. The court held that the above items were unauthorized and no amendment could be made by inserting the correct sum. R. v. Laird, North-West Ter. Reps. 105. On a conviction for maliciously shooting a dog, the following costs are excessive, and illegal: service of summons on defendant and on seven witnesses, each charged at 50 cents: attendance of constable in court, $2.00; information, $1.00; summons

and copy, 25 cents; whereas the tariff allows only 50 cents for both information and summons, and 10 cents for copy; seven original subpœnas, 25 cents each, whereas at most only two (one on each side) could be charged for and then only 10 cents each. $2.00 to justices for hearing and determining, whereas 50 cents is proper and nothing to any associate justices. $6.00 to witness is not authorized by the tariff at all, the allowance being 75 cents per day. R. v. Tebo, North-West Ter. Reps. 8.

In Ontario the R. S. c. 78, s. 3, provides that every justice wilfully receiving a larger amount of fees than by law are authorized to be received, shall forfeit and pay the sum of $80, together with full costs of suit.

The Act does not provide for fees in cases above the degree of misdemeanor.

In cases of conviction where witnesses are subpœnaed to give evidence in cases of assault, trespass or misdemeanor, the witness is entitled, in the discretion of the justice, to receive fifty cents for every day's attendance, where the distance travelled does not exceed ten miles, and five cents for each mile above ten.

A magistrate, acting under the R. S. C. c. 156, s. 2, convicted four persons for disturbing an assemblage of persons met for religious worship, and imposed upon *each* a fine of $5, but instead of severing the costs which he had charged, imposed the full amount thereof against each defendant, and received it from each. It was held under the circumstances of the case, that the overcharge must be deemed to have been wilfully made, so as to render the magistrate liable to the penalty imposed by this section of the statute. Parsons q. t. v. Crabbe, 31 C. P. (Ont.) 151.

Magistrates cannot in Ontario collect any costs which are not provided for by this Act. Where a magistrate, in the minute of judgment ordered the defendant "to pay $1.00, for the use of the hall for hearing the case," it was held, that in ordering payment of this sum, there was a clear excess of jurisdiction, and the conviction was quashed. R. v. Elliott, 12 O. R. 524.

THE FOLLOWING ARE THE FEES PROVIDED BY SECTION 1, R. S. O. c. 78.

TABLE OF FEES TO BE TAKEN BY JUSTICES OF THE PEACE OR THEIR CLERKS.

1. For an information and warrant for apprehension, or for an information and summons for assault, trespass, or other misdemeanour	$0 50
2. For each copy of summons to be served on defendant or defendants	10
3. For *every subpœna* (*only one subpœna on each side to be charged for in each case, which may contain any number of names*) ..... (*If the justice of the case requires it, additional subpœnas shall be issued without charge.*	10
4. For every recognizance, (*only one to be charged in each case*)	25
5. For information and warrant for surety of the peace for good behaviour, (*to be paid by complainant*)	50
6. For warrant of commitment for default of surety to keep peace or good behaviour, (*to be paid by complainant*)	50
7. For hearing and determining the case	50
8. Where one justice alone cannot lawfully hear and determine the case, an additional fee for hearing and determining to be allowed to the associate justice	50
In case more justices hear the case, the justice by whom the information was taken (if he hears the case), shall be entitled to one fee of fifty cents for hearing and determining, and the justice who sat at his request shall be entitled as associate to the said additional fee, when one is chargeable.	
If a case occurs which is not covered by this provision, the justices shall be entitled to the fees according to their seniority as justices.	
9. For warrant to levy penalty	25
10. For making up every record of conviction, where the same is ordered to be returned to the sessions or on *certiorari*	1 00
11. But in all cases which admit of a summary proceeding before a single justice of the peace, and wherein no higher penalty than $20 can be imposed, there only shall be charged for the conviction not more than ...	50
And for the warrant to levy the penalty	25
12. For copy of any other paper connected with any trial and the minutes of the same if demanded—*per* folio of one hundred words	10
13. For every bill of costs (*when demanded to be made out in detail*)	10

Items 12 and 13 to be only chargeable when there has been a conviction.)

872. Whenever a conviction adjudges a pecuniary penalty or compensation to be paid, or an order requires the payment of a sum of money, whether the Act or law authorizing such conviction or order does or does not provide a mode of raising or levying the penalty, compensation or sum of money, or of enforcing the

payment thereof, the justice by his conviction, or order after adjudging payment of such penalty, compensation or sum of money, with or without costs, may order and adjudge—

(*a*) that in default of payment thereof forthwith, or within a limited time, such penalty, compensation or sum of money shall be levied by distress and sale of goods and chattels of the defendant, and, if sufficient distress cannot be found, that the defendant be imprisoned in the common gaol or other prison of the territorial division for which the justice is then acting, in the manner and for the time directed by the Act or law authorizing such conviction or order or by this Act, or for any period not exceeding three months, if the Act or law authorizing the conviction or order does not specify imprisonment or does not specify any term of imprisonment, unless such penalty, compensation or sum of money and costs, if the conviction or order is made with costs, and the expenses of the distress and of conveying the defendant to gaol are sooner paid; or

(*b*) that in default of payment of the said penalty, compensation or sum of money, and costs if any forthwith or within a limited time, the defendant be imprisoned in the common gaol or other prison of the said territorial division in the manner and for the time mentioned in the said Act or law, or for any period not exceeding three months, if the Act or law authorizing the conviction or order does not specify imprisonment, or does not specify any term of imprisonment unless the said sums with the like costs and expenses are sooner paid.

2. The justice making the conviction or order mentioned in the paragraph lettered (*a*) of sub-section one of this section may issue a warrant of distress in the form DDD or EEE, as the case requires: and in the case of a conviction or order under the paragraph lettered (*b*) of the said sub-section, a warrant in one of the forms FFF or GGG may issue;

(*a*) if a warrant of distress is issued and the constable or peace officer charged with the execution thereof returns (form III) that he can find no goods or chattels whereon to levy thereunder, the justice may issue a warrant of commitment in the form JJJ.

3. Where by virtue of an Act or law so authorizing the justice by his conviction adjudges against the defendant payment of a penalty or compensation, and also imprisonment, as punishment for an offence, he may, if he thinks fit, order that the imprisonment in default of distress or of payment, as provided for in this section, shall commence at the expiration of the imprisonment awarded as a punishment for the offence.

4. The like proceeding may be had upon any conviction or order made as provided by this section as if the Act or law authorizing the same had expressly provided for a conviction or order in the above terms. R. S. C. c. 178, ss. 62, 66, 67 and 68.

The former statute did not apply where, by the Act authorizing the conviction, a mode of enforcing the payment was stated or provided. Thus, where a conviction, under "The Ontario Medical

Act," R. S. O. c. 148, for practising without being registered, awarded distress in default of payment of the fine imposed, the conviction was quashed, as section 51 of the Act gives power to commit to the common gaol in default of payment of fine. R. v. Sparham, 8 O. R. 570.

So far as the authority of the Parliament of Canada extends, this 872nd section of the Code applies "whether the Act or law authorizing such conviction or order, does or does not provide a mode of raising or levying the penalty." And the Ontario Act, 52 V. c. 10, s. 9, provides that subject to any statute of the Province in this behalf, the procedure for enforcing punishment by fine, penalty or imprisonment, for contravention of any statute of the province, shall conform as nearly as may be to the procedure which might at the time be had under any statute of the Dominion of Canada enforcing the like punishment under such statute.

By section 885 of the Code when an appeal against a conviction or order is decided in favor of the respondent, the justice who made the conviction or order, or any other justice for the same territorial division, may issue a warrant of distress or commitment as if no appeal had been brought. Under section 872 (2) it is only the justice making the conviction or order who can issue the distress warrant, though the forms DDD and EEE seem to apply to any justice. Where two justices are required to convict, one may issue a warrant of distress. Code, s. 842 (4).

The justice should take steps to ascertain whether the defendant has goods or not, and if the latter has property the distress warrant must be issued before the warrant of commitment. McLellan v. McKinnon, 1 O. R. 219.

Under "The Fisheries Act," R. S. C. c. 95, s. 18, a warrant of commitment may issue in the first instance, without previous issue of a warrant of distress—the statute not requiring that a distress warrant should first issue. Arnott v. Bradly, 23 C. P. (Ont.) 1.

So a conviction for an unlawful assault under the R. S. C. c. 162, s. 34, might adjudge the defendant to be imprisoned in the first instance. R. v. O'Leary, 3 Pugs. 264.

So also a summary conviction for assault under ss. 265 or 864 of the Code. Under this 872nd section it is optional with the justice to direct distress, and in default imprisonment, or to direct imprisonment in default of payment without a prior distress. In the latter case the forms FFF or GGG should be used, and in the former the forms DDD or EEE and JJJ

Where by an Act, power is conferred upon justices to issue a distress warrant, "if they shall think fit," they must not refuse to issue it, merely because they think the Act of Parliament does an injustice in giving such power in the particular case. R. v. Boteler, 4 B. & S. 959.

In Ontario the 53 V. c. 24, s. 2, in amending s-s. 3 of s. 2 of the R. S. O. c. 74 in relation to the costs allowed and specified in the conviction or order, goes on to provide that such costs shall extend to and be deemed to include costs and charges of the distress, and also the costs and charges of the commitment and conveying the defendant or the prosecutor or the complainant, as the case may be, to prison, the amount thereof being ascertained and stated in such commitment. Section 3 extends the provisions for costs and the recovery thereof to proceedings on convictions or orders under the authority of "The Municipal Act," or of by-laws of municipal councils passed thereunder, or where recovery and enforcement of penalties is given in the manner and to the extent of such "Municipal Act" or of such by-laws.

The defendant was convicted before two justices of the peace for selling liquor without a license, contrary to s. 49 of the R. S. O. c. 194. A conviction was drawn up and filed with the clerk of the peace, in which it was adjudged that the defendant should pay a fine and costs, and, if they were not paid forthwith, then, inasmuch as it had been made to appear on the admission of the defendant that he had no goods whereon to levy the sums imposed by distress, that he should be imprisoned for three months unless these sums and the costs and charges of conveying him to gaol should be sooner paid. An amended conviction was afterwards drawn up and filed, from which the parts relating to distress and the costs of conveying to gaol were omitted. It was held that if the justices were bound to issue a distress warrant, the insertion of the words

relating to the admission of the defendant that he had no goods was proper, and if they had no power to issue a distress warrant, these words were mere surplusage and did not vitiate the conviction. It was held also, that if the justices had power to require the costs of conveying him to gaol to be paid by the defendant, the conviction was amendable as and when it was amended, for the amendment was not of the adjudication of punishment. R. v. Menary, 19 O. R. 691.

A conviction for carrying on a noxious and offensive trade, contrary to "The Public Health Act," R. S. O. c. 205, 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 gaol, were sooner paid. The court held that the imposition of the costs of commitment and conveying to gaol was unauthorized, and that s. 1 of the R. S. O. c. 74, did not affect the question. R. v. Rowlin, 19 O. R. 199; R. v. Wright, 14 O. R. 668, followed.

The 53 V. c. 24, s. 2, now gives power to include the costs of commitment and conveying to gaol. See *ante*, p. 210.

The costs of conveying the defendant to gaol cannot be included in the costs of a conviction for being unlawfully found drunk on the public streets, contrary to a by-law passed under "The Municipal Act," 55 V. c. 42. R. v. Grant, 18 O. R. 169.

Where a statute imposes a penalty, and in default of payment imprisonment, a conviction directing a distress on non-payment of the penalty and in default of sufficient distress imprisonment, is bad. Thus a conviction under s. 6 of the R. S. C. c. 158, was held bad because it provided for distress in addition to fine and imprisonment, the statute only awarding imprisonment on non-payment of the fine. R. v. Logan, 16 O. R. 335. R. v. Sparham, 8 O. R. 570, approved.

All the provisions of this 872nd section are applicable to convictions under the Canada Temperance Act, which contains no provision for enforcing payment of the fine. In default of sufficient distress the commitment is for "any period not exceeding three months." Where a conviction under the Canada Temperance Act imposed a fine of $100, and directed distress on non-payment of the

fine and in default of sufficient distress imprisonment in the common gaol for two months unless the fine and costs including the costs of commitment and conveying to gaol were sooner paid, it was held that there was no power to include the costs of commitment and conveying to gaol and the conviction was quashed. R. v. Ferris, 18 O. R. 476.

But this section of the Code provides that the expenses of the distress and of conveying the defendant to gaol may be included.

The adjudication on a second offence under the Ontario "Liquor License Act," without providing for distress, directed immediate imprisonment in default of payment of the fine and costs, and the conviction drawn up under it directed imprisonment unless the said several sums were sooner paid. After the issue of a writ of *certiorari* but before its return an amended conviction was returned providing for distress being first made. The Act on which the conviction took place made no provision for the levying of a penalty for a second offence, and, therefore, the case was governed by sections 62 and 66 of the repealed Act, R. S. C. c. 178, and imprisonment could only be resorted to in default of sufficient distress. The court held that the adjudication and the first conviction were void in not providing for distress, and that the amended conviction was also invalid because it did not follow the adjudication. The latter conviction also provided that in default of sufficient distress the defendant should be imprisoned for 20 days "unless the said sums and the costs and charges of conveying the said . . . to the said gaol be sooner paid." This was held bad because the adjudication did not contain a similar direction. If the adjudication had done so the conviction would have been good. R. v. Cantillon, 19 O. R. 197.

Under section 66 of the former statute the imprisonment, in default of distress, could only be in the manner and for the time directed by the Act on which the conviction was founded, and the section, therefore, was held not applicable to a conviction upon any statute which did not direct imprisonment on non-payment of the fine. R. v. Ferris, 18 O. R. 476. Now, however, the imprisonment is to be "in the manner and for the time directed by the Act

or law authorizing such conviction or order or by this Act." See sub-section (a).

It has been held in Nova Scotia that where no mode of raising or levying the penalty or of enforcing the payment of the same is stated or provided, the magistrate who convicts cannot fix any term of imprisonment in default of payment. The ground of this decision was that by the award of imprisonment all the discretion was taken away which the former statute required before the issue of warrants of distress and commitment. R. v. Porter, 20 N. S. R. 352; R. v. Orr, *Ib.* 426, and section 67 of the R. S. C. c. 178, enabled the justice to commit "for any term not exceeding three months." The court saw a difficulty in doing so, if the conviction had already fixed the period of imprisonment. But section 872 (*a*) of the Code seems to meet the case by making the imprisonment in the manner and for the time directed by the Act or law authorizing the conviction or order.

This section provides the mode of enforcing convictions under the Canada Temperance Act, and as it says nothing as to hard labour there is no power to order imprisonment at hard labour under that Act. R. v. Tucker, 16 O. R. 127; R. v. Ferris, 18 O. R. 476.

The result of the former Act was to enable the convicting magistrate to order the levy by distress of the penalty and costs to dispense with such levy where he thinks it would be useless or ruinous and to order the defendant to be imprisoned for a term not exceeding three months unless the penalty and costs and also the costs and charges of the commitment and conveying to gaol were sooner paid. See Mechiam v. Horne, 20 O. R. 267. R. v. Doyle, 12 O. R. 347, followed.

Where the conviction directed imprisonment for sixty days, "unless the said sums and the costs and charges of conveying the said M. to the said common gaol shall be sooner paid," and the commitment directed a detention for the costs and charges of commitment as well as of the conveying to gaol of the prisoner, amounting to the further sum of 75 cents, and it appeared that the costs of conveying to gaol very much exceeded the sum of 75 cents. It was held that there was

no excess in the commitment for under section 98 corresponding to section 901, s-s. 2 of the Code, the gaoler could only detain for the sum mentioned in the warrant. Mechiam v. Horne, 20 O. R. 267.

A conviction under the Canada Temperance Act may include the costs and charges of the commitment and conveying the defendant to gaol in default of distress. *Ex parte* Shehan, 29 S. C. N. B. 133.

In a conviction for a first offence of unlawfully selling intoxicating liquor, the costs of commitment and conveying the defendant to gaol, if the fine and costs are not levied by distress, are in the discretion of the justice. Where such costs are not awarded they should not form part of the conviction in the form VV given by the Act which admits of variance. Form T given by the 51 V. c. 34, is not applicable to a case where the justice does not adjudge payment of the costs of commitment and conveying the defendant to gaol. The costs of a distress were not in the discretion of the justice under section 66 of the R. S. C. c. 178. *Ex parte* Whalen, 29 S. C. N. B. 144.

A warrant of commitment for an indefinite time, or which directs the prisoner to be kept in custody until the costs are paid, without stating the amount, is bad. Dawson v. Fraser, 7 Q. B. (Ont.) 391; see also Dickson v. Crabb, 24 Q. B. (Ont.) 494; followed in Moffatt v. Barnard, 24 Q. B. (Ont.) 498.

A warrant reciting a coroner's inquisition, and stating the offence as follows:—That C. " stands charged with having inflicted blows on the body of the said F." and not showing the place where the blows, if any, were inflicted, or the offence, if any, was committed, is bad. *Re* Carmichael, 10 U. C. L. J. 325. The warrant should show the place. *Re* Beebe, 3 P. R. (Ont.) 270.

Omitting to state the conviction of a defendant in his warrant of commitment, will not subject a justice to an action for false imprisonment, provided the actual conviction is proved upon his defence. Whelan v. Stevens, Taylor, 245.

A warrant, for non-performance of statute labour, to imprison for the remainder of the penalty, for twelve days absolutely, and not unless the fine and costs should be sooner paid, after alleging

summons, appearance, conviction, and warrant of distress, averred that part of the sum directed to be levied had been made, and that the plaintiff had no more goods, it was held that the warrant was clearly bad, because it was after part of the fine had been paid, and was for an absolute time, and not unless fine and costs should be sooner paid. Trigerson v. Board, P. C. 6 O. S. 405; followed in Sinden v. Brown, 17 A. R. 173; see however the (Ont.) 53 V. c. 24.

Under the Summary Punishment Act, magistrates could not issue their warrant to imprison absolutely for so many days, but only to imprison for so many days, unless the fine and costs be sooner paid. Ferguson v. Adams, 5 Q. B. (Ont.) 194.

It is no objection to a warrant of commitment in default of distress, that it was issued prior to the expiration of a warrant of remand, provided that it is issued after the return of the distress warrant. R. v. Collier, 12 P. R. (Ont.) [illegible], R. v. Sanderson, 12 O. R. 178.

A warrant of commitment must contain mandatory words, directing the gaoler to receive and retain the prisoner, otherwise it will be quashed. R. v. Barnes, 4 M. L. R. 448.

A warrant of commitment for non-payment of penalty cannot be executed on a Sunday. Egginton v. Lichfield, 2 E. & B. 717.

But warrants for arrest for any indictable offence, or any search warrant, may be issued on a Sunday or statutory holiday. Code, s. 564, s-s. 3.

It would seem that after conviction and warrant of distress no warrant of commitment can issue until the return (III) is made. See McLellan v. McKinnon, 1 O. R. 219; see Code, s. 872 (*a*).

Where the conviction is bad the warrant of commitment issued thereon also fails. R. v. Richardson, 11 P. R. (Ont.) 95.

It is essential to imprisonment, under this section, in default of distress, that such imprisonment should be provided for in the Act or law upon which the conviction or order is founded, or by this Act.

If such imprisonment is so provided, and the time of it is specified in the Act or law, it can be awarded under this section. R. v. Dunning, 14 O. R. 52.

Where the warrant of commitment can only be issued in default of sufficient distress, no doubt it may be shown by affidavit that no distress warrant has been issued or returned, but when the distress warrant has been issued, and has been duly returned by the bailiff, the court cannot try the truth of the return on affidavits. It is not necessary that the bailiff should actually go to the defendant's premises and search for goods on which to distrain, if he is otherwise satisfied that it would be useless to do so. If the bailiff makes an untrue return he may be liable to an action, but the magistrate is justified in acting upon it, and issuing a warrant of commitment in default of sufficient distress. R. v. Sanderson, 12 O. R. 178. A bailiff, executing a warrant of commitment, is not authorized to accept payment of the penalty and costs, or to give the defendant time to procure the amount. His duty is to execute the warrant. *Ib.*; see *ante*, p. 22. Where the warrant of commitment is not, in fact, given to the bailiff or executed until after the return of the distress warrant, it is immaterial that the former bears date before the latter, for the warrant of commitment need not be dated at all, and so long as it is not issued too soon, it is not material that it bears too early a date. Where the date of the distress warrant is wrongly recited in the warrant of commitment, the defect is clearly amendable under the 118th section of the "Canada Temperance Act." *Ib.*

A warrant of commitment for non-payment of the costs of an appeal to the Sessions, unless such sum and all the costs of distress and commitment, and conveying the party to gaol, be sooner paid, should show the amount of the costs of distress, commitment and conveyance to gaol. Dickson v. Crabb, 24 Q. B. (Ont.) 494; see also Dawson v. Fraser, 7 Q. B. (Ont.) 391; *Re* Bright, 1 U. C. L. J. N. S. 246; *Re* Smith, *Ib.* 241.

A magistrate may, by the warrant of commitment, order that the defendant shall pay the costs of the warrant and of conveying him to gaol and fix the amount of such costs, *ex parte* Jones, 1 D. R. 100.

The warrant of commitment under this section should order payment of the fine to the gaoler, not to the magistrate. R. v. Newton, 11 P. R. (Ont.) 98. See the form JJJ.

Where the defendant is summarily convicted at one time of several offences, the justice has power to award that the imprisonment under one or more of the convictions, shall commence at the expiration of the sentence previously pronounced. R. v. Cutbush, L. R. 2 Q. B. 379. See section 877 of the Code.

Should the defendant be in prison in another division on another conviction, this 872nd section does not apply, and on his liberation therefrom, he should be arrested on the commitment endorsed, as provided by section 844 of the Code and committed to the custody of the gaoler of the division within which the conviction or order was made. When a justice convicts a defendant, on the same day, of two or more offences, the conviction and commitment in one of the cases, should adjudge and order the imprisonment to commence at the expiration of the imprisonment adjudged and ordered in the other case. R. v. Wilkes, 4 Burr. 2577; R. v. Cutbush, L. R. 2 Q. B. 379.

The proper course where there is a conviction sufficient in law and there is a variance between the conviction and the warrant of commitment is to enlarge any motion to quash, so as to enable the magistrate to file a fresh warrant of commitment in conformity with the conviction returned. This course was adopted where the prisoner was convicted of keeping a house of ill fame and the conviction alleged that the offence was committed in January 1887 and the commitment in January 1888. A defect of this kind is amendable under the 800th section of the Code, which was followed on conviction. R. v. Lavin, 12 P. R. (Ont.) 642.

A provision for distress in default of payment of the fine and costs imposed under a by-law, did not constitute a part of the penalty or punishment, but was merely a means of collecting the penalty, as authorized by s. 2, s-s. 14 of the (Ont.) 39 V. c. 33 and s. 421 of the 55 V. c. 42. R. v. Flory, 17 O. R. 715.

The imprisonment provided by s. 68 of the R. S. C. c. 178, was an alternative punishment in place of the penalty. Where the

penalty imposed was not paid, s. 68 applied, and the imprisonment could only be for two months where the costs and penalty did not exceed twenty-five dollars. R. v. Tebo, North-West Terr. Reps. 8.

873. When an information or complaint is dismissed with costs the justice may issue a warrant of distress on the goods and chattels of the prosecutor or complainant, in the form KKK, for the amount of such costs; and, in default of distress, a warrant of commitment in the form LLL may issue: Provided that the term of imprisonment in such case shall not exceed one month. R. S. C. c. 178, s. 70.

874. If after delivery of any warrant of distress issued under this part to the constable or constables to whom the same has been directed to be executed, sufficient distress cannot be found within the limits of the jurisdiction of the justice granting the warrant, then upon proof being made upon oath or affirmation of the handwriting of the justice granting the warrant, before any justice of any other territorial division, such justice shall thereupon make an endorsement on the warrant, signed with his hand, authorizing the execution of the warrant within the limits of his jurisdiction, by virtue of which warrant and endorsement the penalty or sum and costs, or so much thereof as has not been before levied or paid, shall be levied by the person bringing the warrant, or by the person or persons to whom the warrant was originally directed, or by any constable or other peace officer of the last mentioned territorial division, by distress and sale of the goods and chattels of the defendant therein.

2. Such endorsement shall be in the form HHH in schedule one to this Act. R. S. C. c. 178, s. 63.

875. Whenever it appears to any justice that the issuing of a distress warrant would be ruinous to the defendant and his family, or whenever it appears to the justice, by the confession of the defendant or otherwise, that he has no goods and chattels whereon to levy such distress, then the justice, if he deems it fit, instead of issuing a warrant of distress, may commit the defendant to the common gaol or other prison in the territorial division, there to be imprisoned, with or without hard labour, for the time and in the manner he would have been committed in case such warrant of distress had issued and no sufficient distress had been found. R. S. C. c. 178, s. 64.

Where an Act directs a penalty to be recovered by distress, and, in default of distress, by imprisonment, a warrant of commitment cannot be issued in the first instance under the (N. B.) C. S. c. 62, s. 25, unless it appears to the justice by the admission of the defendant or by evidence that the defendant has not sufficient goods whereon to levy a distress. Winslow v. Gallagher, 27 S. C. N. B. 25. And the evidence should appear on the face of the pro-

ceedings, and it is not sufficient for the magistrate merely to state in the conviction that the fact had been made to appear to him.

876. Whenever a justice issues a warrant of distress as hereinbefore provided, he may suffer the defendant to go at large, or verbally, or by a written warrant in that behalf, may order the defendant to be kept and detained in safe custody, until return has been made to the warrant of distress, unless the defendant gives sufficient security by recognizance or otherwise, to the satisfaction of the justice; for his appearance, at the time and place appointed for the return of the warrant of distress, before him or before such other justice for the same territorial division as shall then be there. R. S. C. c. 178, s. 65.

After conviction, and pending the return of a warrant of distress, a remand warrant, committing the defendant to the gaoler of the common gaol of the county in which the defendant was convicted, is proper. R. v. Collier, 12 P. R. (Ont.) 316.

877. Whenever a justice, upon any information or complaint, adjudges the defendant to be imprisoned, and the defendant is then in prison undergoing imprisonment upon conviction for any other offence, the warrant of commitment for the subsequent offence shall be forthwith delivered to the gaoler or other officer to whom it is directed; and the justice who issued the same, if he thinks fit, may award and order therein that the imprisonment for the subsequent offence shall commence at the expiration of the imprisonment to which the defendant was previously sentenced. R. S. C. c. 178, s. 69.

Every one who is summarily convicted of any offence for which no punishment is specially provided, shall be liable to a penalty not exceeding fifty dollars or to imprisonment with or without hard labour for a term not exceeding six months or to both. Code, s. 951, s-s. 2. See also s. 954.

878. Whenever a defendant gives security by or is discharged upon recognizance and does not afterwards appear at the time and place mentioned in the recognizance, the justice who took the recognizance, or any justice who is then present, having certified upon the back of the recognizance the non-appearance of the defendant, may transmit such recognizance to the proper officer in the province appointed by law to receive the same, to be proceeded upon in like manner as other recognizances; and such certificate shall be *prima facie* evidence of the non-appearance of the said defendant.

2. Such certificate shall be in the form MMM in schedule one to this Act. The proper officer to whom the recognizance and certificate of default are to be transmitted, in the province of Ontario, shall be the clerk of the peace of the county for which such justice is acting, except in the district of Nipissing as to which district the proper officer shall be the clerk of the peace for the county of

Renfrew; and the Court of General Sessions of the Peace for such county shall, at its then next sitting, order all such recognizances to be forfeited and estreated, and the same shall be enforced and collected in the same manner and subject to the same conditions as any fines, forfeitures or amercements imposed by or forfeited before such court; and in the other provinces of Canada, the proper officer to whom any such recognizance and certificate shall be transmitted, shall be the officer to whom like recognizances have been heretofore accustomed to be transmitted under the law in force before the passing of this Act; and such recognizances shall be enforced and collected in the same manner as like recognizances have heretofore been enforced and collected. R. S. C. c. 178, ss. 71 and 72.

See Code, s. 900 (13). Also ss. 910 to 926.

879. Unless it is otherwise provided in any special Act under which a conviction takes place or an order is made by a justice for the payment of money or dismissing an information or complaint, any person who thinks himself aggrieved by any such conviction or order, the prosecutor or complainant, as well as the defendant, may appeal, in the province of Ontario, to the Court of General Sessions of the Peace; in the province of Quebec, to the Court of Queen's Bench, Crown side; in the provinces of Nova Scotia, New Brunswick and Manitoba, to the county court of the district or county where the cause of the information or complaint arose; in the province of Prince Edward Island, to the Supreme Court; in the province of British Columbia, to the county or district court, at the sitting thereof which shall be held nearest to the place where the cause of the information or complaint arose; and in the North-west Territories, to a judge of the Supreme Court of the said territories, sitting without a jury, at the place where the cause of the information or complaint arose, or the nearest place thereto where a court is appointed to be held.

2. In the district of Nipissing such person may appeal to the Court of General Sessions of the Peace for the county of Renfrew. 51 V. c. 45, s. 7; 52 V. c. 45, s. 6.

The right of appeal under this section will be lost if the person aggrieved proceeds under s. 900 of the Code, by way of stating a case for review, see s-s. 14 of s. 900.

In Ontario the 52 V. c. 15, s. 3, gives an appeal to the Court of Appeal from a judgment or decision of the High Court or a judge thereof, upon an application to quash a conviction made under a statute of the legislature of Ontario creating an offence punishable by summary conviction before a justice, or to discharge a prisoner who is held in custody under such conviction and without giving any security on the appeal whether the conviction is quashed or the prisoner discharged or the application is refused. But a certificate of the Attorney-General must be obtained that the

decision involves a question on the construction of "The British North America Act."

Section 742 of the Code gives an appeal to the Court of Appeal in certain cases, and s. 3(*e*) defines the expression "Court of Appeal." In Ontario it signifies any division of the High Court of Justice. Except as provided by these statutes the Court of Appeal for Ontario has no jurisdiction to entertain an appeal from an order of the court quashing a summary conviction. R. v. Eli, 13 A. R. 526.

Where an order quashing a conviction is made upon default of any one appearing to support it, the effect of quashing it, not only involving the restoration of the fine paid by the defendant, but exposing the convicting magistrate to an action, there is inherent jurisdiction in the court to open up such order so made. The jurisdiction of the full court to rehear motions to quash convictions has not been taken away by "The Judicature Act," but still exists in the Divisional Courts. R. v. Fee, 13 O. R. 590.

Under "The Customs Act," R. S. C. c. 32, s. 241, an appeal lies from a conviction by a justice of the peace under the Act in the manner provided by law, from convictions in cases of summary conviction in that province, in which the conviction was had, on the appellant furnishing security by bond or recognizance, with two sureties, to the satisfaction of such justice, to abide the event of such appeal.

By "The Seamen's Act," R. S. C. c. 74, s. 118, as amended by 53 V. c. 16, s. 1, there is no appeal from any conviction or order adjudged or made under the Act, nor is such appeal allowed under "The Inland Water's Seamen's Act," R. S. C. c. 75, s. 41.

In the province of Ontario by virtue of the R. S. c. 74, in reference to penalties or punishments imposed under the authority of any statute of the province, the procedure before justices of the peace is assimilated to that prevailing under the statutes of Canada.

Section 4 gives the right of appeal from any conviction or order made by a justice of the peace, under the authority of any statute in force in Ontario, and relating to matters within the legislative authority of the legislature of Ontario.

The words "conviction or order" in this section were held to mean the same as in the R. S. C. c. 178, s. 76, and an order does not mean an order of dismissal of a complaint, nor can the prosecutor of such complaint appeal, under this section. *Re* Murphy, 8 P. R (Ont.) 420.

Under this 879th section of the Code there is an appeal from an order of dismissal, but s. 5 of the R. S. O. c. 74, does not show that there is now any appeal from an order of dismissal in Ontario.

A statute giving an appeal does not take away the right to a *certiorari*, and it seems that it would not have this effect, even if it provided that the decision of the court appealed to should be final.

In the case of a conviction for an offence not being a crime, such as a breach of a by-law, though the conviction is affirmed on appeal to the sessions, the writ of *certiorari* is not taken away by this statute. *Re* Bates, 40 Q. B. (Ont.) 284; R. v. Washington, 46 Q. B. (Ont.) 221.

Under the C. S. U. C. c. 114, no appeal lay to the Quarter Sessions, in the case of any conviction for a *crime*, the Act only applying to a conviction for any matter cognizable by a Justice of the Peace, and not being a crime. *Re* Lucas, 29 Q. B. (Ont.) 81; *Re* Meyers, 23 Q. B. (Ont.) 613.

Under this section, the right of appeal from convictions or orders is limited to those made under any statute in force in Ontario relating to matters within the legislative authority of the Legislature of Ontario. As to the legislative authority of the Legislature of Ontario, see the "British North America Act, 1867," ss. 91 & 92; see also R. v. Taylor, 36 Q. B. (Ont.) 183; R. v. Boardman, 30 Q. B. (Ont.) 553.

Under s. 5 of the Act, the practice and proceedings on appeal shall be the same as the practice and proceedings under the statutes of the Dominion of Canada then in force, and witnesses, not examined at the trial before the magistrate, may, on the application of either party, be examined on the appeal. R. v. Washington, 46 Q. B. (Ont.) 221. See Code, s. 881.

The notice of appeal and the entry into recognizance, if required by statute, as conditions precedent to the right of appeal, must be proved or admitted, whether it is intended to try or only to move

to respite the hearing; for, until it is made to appear to the court that the appeal is duly lodged at the proper sessions, as well as that due notice has been given and recognizance entered into, where so required by the Act, applicable to the appeal, jurisdiction to hear or adjourn will not attach. But a respondent may waive proof of appeal or admit it so as to make proof unnecessary.

A mere technical objection to entertaining the appeal will be waived by the respondent asking an adjournment, but an objection of substance as to the jurisdiction of the court cannot be so waived. *Re* Myers, 23 Q. B. (Ont.) 611. And if notice of appeal has not been given in time, or the recognizance entered into, or other matter required to be done before the appellant can proceed with his appeal, the objection could probably be taken at any time, for it would shew that the court had no jurisdiction to entertain the appeal. R. v. Crouch, 35 Q. B. (Ont.) 433-9. Where, however, notice of appeal was duly given, and admitted by the respondent, and the recognizance also duly entered into and filed with the clerk of the peace, but on the appeal coming on for hearing, and after the jury were sworn, the respondent's counsel objected that there was no proof of the recognizance, but afterwards continued the case, and did not renew the objection at the close, it was held that the respondent's counsel had admitted that the necessary recognizance had been entered into. *Ib.*

On appeal from a conviction to the general sessions of the peace, the notice of appeal and the recognizance were produced by the clerk of the court from its files, exhibited to the court, and placed in its custody, and evidence was given of the service of the notice of appeal. The recognizance purported to be executed by the convicting justice, and appeared to have been in the custody of the clerk of the peace from its date. This was held sufficient proof to found the jurisdiction of the court to try the appeal in the absence of evidence shewing the recognizance to be false. The recognizance being in the same court, enrolment was held unnecessary, though if sought to be used in another court, production of an exemplification of enrolment would perhaps be necessary. R. v. Essery, 7 P. R. (Ont.) 290. Where the recognizance was filed by the appellant instead of being sent to the clerk of the peace by the jus-

tice who took it, and the condition therein was to appeal to the "general or quarter sessions," and not to the "court of general sessions of the peace," it was held nevertheless a sufficient compliance with the statute. R. v. Essery, 7 P. R. (Ont.) 290.

Where a rule *nisi* for a *mandamus* to the sessions commanding them to hear an appeal, called upon the court of quarter sessions in and for the united counties, etc., instead of the justices of the peace, for the united counties, and the rule had been enlarged in the prior term, on objection to the rule on the above ground, it was replied that the enlargement waived the objection, and this seems to have been acquiesced in by counsel and by the court. *Re* Justices, 13 C. P. (Ont.) 159. In fact, it seems that in all cases formal and technical objections are waived by an enlargement. R. v. Allen, 5 P. R. (Ont.) 453-8.

Under the (Ont.) 32 V. c. 32, s. 36, an appeal from a conviction for selling liquor without license was required to be tried by the chairman of the quarter sessions without a jury. *Re* Brown, 6 P. R. (Ont.) 1.

The general principle of appeals is that judgment is to be rendered upon the same facts that were before the inferior tribunal. See R. v. Justices, 5 O. S. 74.

Under the C. S. U. C. c. 114, there was no power of adjournment. The appeal was required to be heard at the Court of Quarter Sessions appealed to, for the Act provided that the court should at *such sessions* hear and determine the matter of such appeal. *Re* McCumber, 26 Q. B. (Ont.) 516.

So the costs of an appeal from a justice's conviction, as well as the appeal itself, had to be determined at the sessions appealed to. R. v. Murray, 27 Q. B. (Ont.) 134. On an Ontario appeal however, there is a power of adjournment, the practice being the same as on appeal to the General Sessions, from a conviction before a justice of the Peace, made under the authority of a statute of Canada. See Code, s. 880. (*f*)

The R. S. O. c. 75, relates to the procedure on appeals [illegible] judge of a county court from summary convictions.

S. on the 9th of February, 1875, was convicted before justices of an offence against the Act, for the sale of spirituous liquors. On

the 27th he obtained a *certiorari* to the justices to return the conviction into the Queen's Bench, which was not served until the 9th of July. In the meantime, on the 3rd of March, he procured a summons from the county judge by way of appeal from the conviction under the Act, alleging as a ground for obtaining it so late that the delay arose wholly from the default of the justices. He persisted in his appeal, notwithstanding the *certiorari*, but the judge refused to adjudicate upon the merits, holding that it had not been made to appear to him that the delay arose wholly from the default of the convicting justices, and therefore, that he had no jurisdiction, the summons not having been procured within ten days after the date of the conviction. On the 13th of September, the justices returned to the *certiorari*, that before its delivery to them they had, at the request of S, transmitted the conviction and papers to the county judge upon the appeal, under the Act. See s. 3, thirdly. In November, S. having procured the papers to be returned by the county court clerk at Barrie, to the magistrate's clerk at Orillia, moved to quash the return to the *certiorari*, and for another writ, or for an attachment for not having returned the conviction in obedience to it, or for an order to return the conviction forthwith, or to amend the return by including the conviction therein. In support of this motion, it was urged that the magistrates wrongfully put it out of their power to return the writ, by transmitting the papers to the clerk of the county court, when they must have known that the time for transmitting the papers had expired, and that the appeal was too late.

The application was refused, for S. having procured the transmission of the papers for his own appeal, could not insist that it was wrong; it was apparent that he had abandoned the *certiorari* in order to carry on his appeal, and when he served the writ he knew that the justices had not the papers to return.

The county court judge has jurisdiction to issue a summons in appeal at any time within one month, if it appears to him that the delay in transmitting the proceedings is wholly the default of the justices, and the court expressed an opinion that the justices could not properly have refused to transmit the papers, on the.

ground that the appeal was not made in time; but that on the recognizance being furnished, they should transmit them at least within the month, leaving it to the county court judge to decide as to the cause of delay. R. v. Slaven, 38 Q. B. (Ont.) 557.

The R. S. O. c. 75, contains a provision for the transmission, by the clerk of the county court of the proceedings and evidence, after the matter is finally disposed of, to the clerk of the peace. See s. 3, thirdly. This provision was introduced since R. v. Slaven, *supra*, was decided.

The record of conviction may be said generally to consist of two adjudications, the one the adjudication of guilt or conviction, properly so called, and the other, the adjudication of punishment or sentence, properly so called. From the conviction, properly so called, there is an appeal to the sessions, but from the sentence there is no appeal to the sessions. McLellan v. McKinnon, 1 O. R. 238, *per* Armour, J.

Two justices appointed in 1880, for the temporary judicial district of Nipissing, made a conviction in the said district of one M., for an assault committed there. It was held that no appeal would lie under 9 V. c. 41, to the general sessions of the county of Renfrew, being the nearest to the place of conviction, for the justices were not appointed under that Act, but under the R. S. O. c. 71, and the place of conviction was not in any part of Canada defined and declared by proclamation under that Act. Gibson v. McDonald, 7 O. R. 401.

Under s-s. 2 of s. 879 of the Code, the appeal is to be to the court of general sessions of the peace for the county of Renfrew.

The former Act gave no appeal to a prosecutor, but only to the defendant. See *Re* Murphy, 8 P. R. (Ont.) 420. Now, any person, the prosecutor or complainant as well as the defendant, may appeal.

An order, as distinguished from a conviction, may be appealed from, and there is now no distinction between a conviction and order and an order of dismissal, except in Ontario.

In Nova Scotia an appeal will lie to the county court of the county from a conviction for penalties under "The Fisheries Act";

R. S. C. c. 95, s. 20, providing that the laws relating to summary convictions and orders shall apply to cases under said Act. R. v. Todd, 1 Rus. & Ches. N. S. 62.

880. Every right of appeal shall, unless it is otherwise provided in any special Act, be subject to the conditions following, that is to say:—

(*a*) If the conviction or order is made more than fourteen days before the sittings of the court to which the appeal is given, such appeal shall be made to the then next sittings of such court; but if the conviction or order is made within fourteen days of the sittings of such court, then to the second sittings next after such conviction or order;

(*b*) The appellant shall give to the respondent, or to the justice who tried the case for him, a notice in writing, in the form NNN in schedule one to this Act, of such appeal, within ten days after such conviction or order;

(*c*) The appellant, if the appeal is from a conviction adjudging imprisonment, shall either remain in custody until the holding of the court to which the appeal is given, or shall enter into a recognizance in the form OOO in the said schedule with two sufficient sureties, before a justice, conditioned personally to appear at the said court, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as are awarded by the court; or, if the appeal is against any conviction or order, whereby only a penalty or sum of money is adjudged to be paid, the appellant (although the order directs imprisonment in default of payment), instead of remaining in custody as aforesaid, or giving such recognizance as aforesaid, may deposit with the justice convicting or making the order such sum of money as such justice deems sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction or order, and the costs of the appeal; and upon such recognizance being given, or such deposit being made, the justice before whom such recognizance is entered into, or deposit made, shall liberate such person, if in custody;

(*d*) In case of an appeal from the order of a justice, pursuant to section five hundred and seventy-one, for the restoration of gold or gold-bearing quartz, or silver or silver ore, the appellant shall give security by recognizance to the value of the said property to prosecute his appeal at the next sittings of the court and to pay such costs as are awarded against him;

(*e*) The court to which such appeal is made shall thereupon hear and determine the matter of appeal and make such order therein, with or without costs to either party, including costs of the court below, as seems meet to the court,—and, in case of the dismissal of an appeal by the defendant and the affirmance of the conviction or order, shall order and adjudge the appellant to be punished according to the conviction or to pay the amount adjudged by the said order, and to pay such costs as are awarded,—and shall, if necessary, issue process for enforcing the judgment of the court; and whenever, after any such deposit has been made as aforesaid, the conviction or order is affirmed, the court may order the sum thereby adjudged to be paid, together with the costs of the conviction or order, and the

costs of the appeal, to be paid out of the money deposited, and the residue, if any, to be repaid to the appellant; and whenever, after any such deposit, the conviction or order is quashed, the court shall order the money to be repaid to the appellant;

(*f*) The said court shall have power, if necessary, from time to time, by order endorsed on the conviction or order, to adjourn the hearing of the appeal from one sittings to another, or others, of the said court;

(*g*) Whenever any conviction or order is quashed on appeal, as aforesaid, the clerk of the peace or other proper officer shall forthwith endorse on the conviction or order a memorandum that the same has been quashed; and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall, when certified under the hand of the clerk of the peace, or of the proper officer having the custody of the same, be sufficient evidence in all courts and for all purposes, that the conviction or order has been quashed. 51 V. c. 45, s. 8; 53 V. c. 37, s. 24.

If the conviction is made within fourteen days of the sittings of the court, and a notice of appeal is given to the sittings *then next ensuing*, instead of the second sittings next after such conviction, the notice will be void, and will not prevent a proper notice being afterwards given (if given within ten days after the conviction) for the second sittings thereafter. R. v. Caswell, 33 Q. B. (Ont.) 303.

The words within ten days after conviction, exclude the day of conviction. Scott v. Dickson, 1 P. R. (Ont.) 366. If the last of the ten days limited for notice fall on a Sunday or holiday, notice given on the Monday following or next juridical day, is sufficient. R. S. C. c. 1, s. 7 (27).

If the appeal is within a time after order made, the making of the order, or verbal decision, and not the service or formal drawing up of it is meant. R. v. Derbyshire, 7 Q. B. 193; *ex parte* Johnson, 3 B. & S. 947. Sunday is usually included in the number of days. *Ex parte* Simkin, 2 E. & E. 392.

Where the act is to be done within so many days after a given event, the day of the happening thereof must be excluded. Williams v. Burgess, 12 A. & E. 635; Young v. Higgins, 6 M. & W. 49. And when the words are "between" the 29th May and the 28th August, both the days named are excluded. R. v. Murphy, 24 N. S. R. 21. See also Radcliffe v. Bartholomew, L. R. 1 Q. B. 161 (1892).

No practice of the sessions can do away with the notice of appeal. R. v. Lincolnshire, 3 B. & C. 548. Nor can the sessions diminish the time allowed for the notice of appeal or add a new condition. R. v. Staffordshire, 4 A. & E. 842. It is not necessary that this notice should be personally served, if it be left for the party at his dwelling house, it will be sufficient. R. v. York, 7 Q. B. 154. But it is not sufficient service to send the notice by post. R. v. Leominster, 2 B. & S. 391.

The notice of appeal, given by the statute, was also held sufficiently particular to allow all objections being raised which were apparent on the face of the conviction or order. Helps and Eno, 9 U. C. L. J. 302. It is not now necessary to state any grounds of appeal in the notice, so that it is apprehended the appellant is not limited as to his objections.

A notice of appeal addressed to the convicting magistrate alone, and not to the respondent, is invalid. Keohan v. Cook, North-West Terr. Reps. 54. But it seems that under s-s. (*b*) the notice of appeal may be served on the convicting justice, and it has been held sufficient to serve a notice of appeal on the convicting justice without stating on its face that it is for the prosecutor, as the justice must be taken to know that it is so. *Ex parte* Doherty, 25 S. C. N. B. 38. And the form NNN is sufficient, the 982nd section of the Act providing that the several forms in the schedule, varied to suit the case, shall be deemed good, valid, and sufficient in law.

The notice should be signed by the party appealing, or his attorney, but it need not set forth the grounds of appeal. If the notice is otherwise in form it is not absolutely necessary that it should be signed by the appellant. R. v. Nichol, 40 Q. B. (Ont.) 46.

The notice may be signed by the attorney's clerk for the appellant. R. v. Kent, L. R. 8 Q. B. 305.

Where there are several appellants they may either join in one notice or each of them may give a separate notice. R. v. Oxford, 4 Q. B. 177.

Service of notice of appeal in court, upon the clerk to justices, in their presence, is good service. R. v. Eaves, L. R. 5 Ex. 75.

If the notice is given in time, the recognizance may be entered into at any time before the case is stated and delivered. Stanhope v. Thorsby, L. R. 1 C. P. 423.

The time of entering into recognizances is when the appellant appears before the justice, and verbally acknowledges them, though they are not drawn up until afterwards. R. v. St. Albans, 8 A. & E. 932.

When recognizances are tendered, the justice is bound to receive them, and cannot refuse them because he thinks the notice bad. R. v. Carter, 24 L. J. M. C. 72.

One member of a corporation cannot enter into a recognizance to bind the rest. R. v. Manchester, 7 E. & B. 453.

When, in the recognizance, the appellant, instead of being bound to appear and try the appeal, as required by the Act, was bound to appear at the sessions to answer any charge that might be made against him, the appeal was dismissed and the recognizance was not allowed to be taken in court, for although it need not be entered into within ten days, it must be entered into and filed before the sittings of the court of Quarter Sessions, to which the appeal is made. Kent v. Olds, 7 U. C. L. J. 21.

It was held under the former statutes that the form of recognizance to try an appeal, given in the schedule to the C. S. Can. c. 103, p. 1130, was sufficient, though the condition differed in form from that provided for by c. 99, s. 117. *Re* Wilson, 23 Q. B. (Ont.) 301.

If the recognizance does not provide for the payment of the costs of the appeal, as required by this section, the appeal is not properly before the court and cannot be heard. R. v. Becker, 20 O. R. 676.

A recognizance entered into after the expiration of the time prescribed by a statute is not void, and the court of Quarter Sessions, although by reason of the recognizance being out of time it has no jurisdiction to hear the appeal, has jurisdiction to estreat the recognizance for non-payment of such costs as may

have been awarded upon the dismissal of the appeal. R. v. Justice Glamorganshire, 24 Q. B. D. 675.

Under the English Act of 1879 which provides that the recognizance shall be entered into three days after giving notice of appeal, it was held that a notice given after the allowance of a deposit on appeal was not sufficient. R. v. Justice Anglesey, L. R. 2 Q. B. 29 (1892).

It appears to be the established practice for the sessions to hear appeals on the first day, but there is no law compelling them to do so. *Re* Meyers, 23 Q. B. (Ont.) 614.

The court has no power to award costs on discharging an appeal, for want of proper notice of appeal, for the words "shall hear and determine the matter of appeal," mean deciding it upon the merits. *Re* Madden, 31 Q. B. (Ont.) 333; see Code, s. 883; R. v. Becker, 20 O. R. 676; and it seems that the 884th section of the Act would only apply when a proper notice of appeal has been served.

Where the right to appeal is given, under conditions such as entering into recognizance and giving notice, etc., as in the statute, all these conditions must be strictly complied with. R. v. Lincolnshire, 3 B. & C. 548. The person appealing must not only give notice within the proper time, but he must also either remain in custody or enter into the proper recognizance. Kent v. Olds, 7 U. C. L. J. 21; Arch. J. P. 37. A failure to comply with these conditions will not be waived by the respondent asking for a postponement after the appellant has proved his notice of appeal on the first day of the court. *Re* Meyers, 23 Q. B. (Ont.) 611.

If, by the death of the respondent, the giving of notice has become impossible, the appeal may be heard without it. R. v. Lancashire, 15 Q. B. 88.

The court of Quarter Sessions has power to adjourn the hearing of a part heard appeal to a subsequent session. R. v. Guardian C. Union, 7 U. C. L. J. 331. The statute, as we have seen, also expressly confers the power of adjournment. See s. 880 (*f*). An adjournment of the sessions is a continuance of the same sessions or sittings. Rawnsley v. Hutchinson, L. R. 6 Q. B. 305. An appeal dismissed for want of prosecution may, at the instance of the

appellant and satisfactorily accounting for his non-appearance, be reinstated. *Re* Smith, 10 U. C. L. J. 20.

There had been a conviction before two magistrates for a breach of the license law. The counsel for the defendant then demanded an appeal—one of the magistrates asked him to prepare the bond and he himself would see the other necessary papers filed. The defendant's counsel thereupon had the bond prepared, sent it to the defendant and told her that the magistrates would instruct her what else was necessary. The defendant thereupon got the bond executed and gave it to the magistrate, who said "it was all right." There was no affidavit filed on the appeal as required by R. S. N. S. c. 22, s. 28; on application to set aside the appeal, it was held that the appeal must be allowed, the appellant having been misled by the conduct of the magistrate. McKay v. McKay, Thomson, 75.

An appeal under the C. S. U. C. c. 114, was held not to be waived by the appellant, paying the fine and costs. *Re* Justices York, 13 C. P. (Ont.) 159.

There can be no doubt that, where the notice of appeal and the recognizances are duly given, execution is suspended, for the justice in the section now under consideration is directed to liberate the appellant if in custody in such case, and the same effect is given to the making of the deposit after notice of appeal; but there is no provision in the section to meet the circumstances, when the would-be appellant elects to remain in custody, in lieu of giving a recognizance or making a deposit. Kerr's Acts, 226-7.

A prisoner was convicted of vagrancy and committed to custody under a warrant issued by the convicting magistrate. She gave bail and was discharged from custody under this section. On the appeal to the sessions being heard, the prisoner was found guilty and the conviction affirmed, and the prisoner directed to be punished according to the conviction. No process was issued by the sessions for enforcing the judgment of the court, but a new warrant was issued by the convicting magistrate under which the prisoner was retaken. Writs of *habeas corpus* and *certiorari* were issued, and on the return thereof a motion was made for the

discharge of the prisoner. In the margin of the writ of *habeas corpus*, it was marked "*per* 33 Car. 2," which was signed by the judge issuing it. It was held that the prisoner was not in custody or confined under the judgment of the sessions but under the warrant of the convicting magistrate, and the court inclined to the opinion, under the circumstances, the convicting magistrate was *functus officio* and therefore could not issue the warrant in question, which should have been issued by the sessions; and possibly they could have directed punishment for the unexpired term; but that if no bail had been given and the prisoner had remained in custody, no further order of commitment would have been necessary, or if no warrant of commitment had been issued prior to appeal, the magistrate could have issued one thereafter. The court held also that there was power to act under the R. S. O. c. 70, and so a judge in chambers could deal with the motion, that marking the writ as under the statute of Charles, did not prevent the learned judge so acting under c. 70, or at common law, and as no offence was declared, the prisoner was directed to be discharged on the *habeas corpus*. It was held also that under a *certiorari* the conviction might be quashed, and as the judgment of the sessions confirmed the conviction it would probably fall with it. R. v. Arscott, 9 O. R. 541.

The direction in section 880 (F) for the endorsement of the order to adjourn on the conviction is directory only. Where the appeal comes on, an adjournment asked for entered in the clerk's book acted upon and the conviction quashed at the adjourned sittings, the mere fact that the order to adjourn was not indorsed on the conviction, will not affect the validity of the proceedings. R. v. Read, 17 O. R. 185.

881. When an appeal against any summary conviction or decision has been lodged in due form, and in compliance with the requirements of this part the court appealed to shall try, and shall be the absolute judge, as well of the facts as of the law, in respect to such conviction or decision; and any of the parties to the appeal may call witnesses and adduce evidence, whether such witnesses were called or evidence adduced at the hearing before the justice or not, either as to the credibility of any witness, or as to any other fact material to the inquiry; but any evidence taken before the justice at the hearing below, signed by the witness giving the same and certified by the justice, may be read

on such appeal, and shall have the like force and effect as if the witness was there examined: Provided, that the court appealed to is satisfied by affidavit or otherwise, that the personal presence of the witness cannot be obtained by any reasonable efforts. 53 V. c. 37, s. 25.

Under the former statutes, the appellant could not of right demand that a jury be empanelled to try the appeal. It was discretionary with the court to try the appeal or to grant a jury. Gilchen v. Eaton, 13 L. C. R. 471; 10 U. C. L. J. 81. A trial by jury was warranted by the 13th and 14th V. c. 54; Hespeler and Shaw, 16 Q. B. (Ont.) 104. See also R. v. Bradshaw, 38 Q. B. (Ont.) 564. Under the Act as at present framed, the court shall try the appeal and be absolute judge as well of the facts as of the law.

The 36 V. c. 58, s. 2, was not confined to cases under the Acts mentioned in the preamble and title relating only to the desertion of seamen, but extended to other cases, and on an appeal in Ontario to the sessions from a conviction by a magistrate for breach of a municipal by-law, it was held to be in the discretion of the chairman to grant or refuse a request for a jury, the Act being declaratory of the meaning of the section now under consideration. R. v. Washington, 46 Q. B. (Ont.) 221.

If the conviction or order has not been returned to the sessions a *subpœna duces tecum* should be served on the justice to produce it, and if the order or conviction has been served upon the respondent it will be advisable also to give him a notice to produce it.

Upon the hearing, the first step after the appeal is called on is that the appellant should prove his notice unless it be admitted. This Act gives the right on appeal to the sessions to examine witnesses not heard on the trial before the magistrate. R. v. Washington, 46 Q. B. (Ont.) 221.

882. No judgment shall be given in favour of the appellant if the appeal is based on an objection to any information, complaint or summons, or to any warrant to apprehend a defendant issued upon any such information, complaint or summons, for any alleged defect therein, in substance or in form, or for any variance between such information, complaint, summons or warrant and the evidence adduced in support thereof at the hearing of such information or complaint, unless it is proved before the court hearing the appeal that such objection was made before the justice before whom the case was tried and by whom such

conviction, judgment or decision was given, or unless it is proved that notwithstanding it was shown to such justice that by such variance the person summoned and appearing or apprehended had been deceived or misled, such justice refused to adjourn the hearing of the case to some further day, as herein provided. R. S. C. c. 178, s. 79.

See *ante*, p. 160.

883. In every case of appeal from any summary conviction or order had or made before any justice, the court to which such appeal is made shall, notwithstanding any defect in such conviction or order, and notwithstanding that the punishment imposed or the order made may be in excess of that which might lawfully have been imposed or made, hear and determine the charge or complaint on which such conviction or order has been had or made, upon the merits, and may confirm, reverse or modify the decision of such justice, or may make such other conviction or order in the matter as the court thinks just, and may by such order exercise any power which the justice whose decision is appealed from might have exercised, and such conviction or order shall have the same effect and may be enforced in the same manner as if it had been made by such justice. The court may also make such order as to costs to be paid by either party as it thinks fit.

2. Any conviction or order made by the court on appeal may also be enforced by process of the court itself. 53 V. c. 37, s. 26.

It seems the court may alter the conviction to make it agree with the adjudication or minute of conviction, but if both agree and the conviction is wrong, they cannot amend, as there is no power to interfere with the adjudication. R. v. Elliott, 12 O. R. 524; R. v. Walsh, 2 O. R. 206; R. v. Menary, 19 O. R. 691. See *ante*, p. 190.

It would seem that under this section the sessions cannot amend the sentence or adjudication of punishment, but only the conviction or adjudication of guilt. They cannot, therefore, strike out of a conviction the part imposing "hard labour." McLellan v. McKennon, 1 O. R. 219. As a general rule the sessions cannot alter the sentence or adjudication of the justice, though they can amend matters of form, *Ib.*, and there is no power of amendment when the conviction is returned on *certiorari*. See R. v. Allbright, 9 P. R. (Ont.) 25, 27.

884. The court to which an appeal is made, upon proof of notice of the appeal to such court having been given to the person entitled to receive the same, though such appeal was not afterwards prosecuted or entered, may, if such appeal has not been abandoned according to law, at the same sittings for which such

notice was given, order to the party or parties receiving the same such costs and charges as are thought reasonable and just by the court, to be paid by the party or parties giving such notice; and such costs shall be recoverable in the manner provided by this Act for the recovery of costs upon an appeal against an order or conviction. R. S. C. c. 178, s. 81.

It seems that to give the court jurisdiction under this section, a proper notice of appeal must be served. See *ante*, p. 228.

Where the notice of appeal has been given and might have been acted on, the court to which the notice referred can give costs. R. v. Leeds, 3 E. & E. 561; R. v. Liverpool, 15 Q. B. 1070; and a notice for the wrong sessions cannot be treated as a notice for the right sessions. R. v. Salop, 4 E. & B. 257.

Where an appeal to the sessions is dismissed without being heard and determined, there is no power to impose costs. R. v. Becker, 20 O. R. 676. *Re* Madden, 31 Q. B. (Ont.) 333, followed.

See *ante*, p. 231; also s. 883.

An indictment will not lie to enforce an order of sessions directing payment of the costs of an appeal. R. v. Orr, 12 Q. B. (Ont.) 57.

The court must exercise its discretion in each case as to costs, and cannot lay down a general rule applicable to all cases. R. v. Merioneth, 6 Q. B. 163.

The order for costs should direct payment to the clerk of the peace. Gay v. Matthews, 4 B. & S. 425. See s. 897 of the Code.

The taxation of costs is a judicial act and must either be done by the court or they must adopt the act of the clerk of the peace, and insert the amount of costs in the order (Selwood v. Mount, 1 Q. B. 726) during the sitting of the court. Freeman v. Reid, 9 C. B. N. S. 301. If the sessions is adjourned to a future day the costs may be finally settled at the adjourned sessions. R. v. Hants, 33 L. J. M. C. 184. If there has been no adjournment, and nothing said about costs, they cannot be granted at the next subsequent sessions. R. v. Staffordshire, 7 E. & B. 935. If, however, the parties consent to have the costs taxed out of court this may be done, and the party enter the judgment *nunc pro tunc*. Freeman v. Reid, *supra*. Or the objection may be waived. *Ex parte* Watkins, 26 J. P. 71.

885. If an appeal against a conviction or order is decided in favour of the respondents, the justice who made the conviction or order, or any other justice for the same territorial division, may issue the warrant of distress or commitment for execution of the same, as if no appeal had been brought. R. S. C. c. 178, s. 82.

See Code, ss, 842 (4) and 872 (2).

886. No conviction or order affirmed, or affirmed and amended, in appeal, shall be quashed for want of form, or be removed by *certiorari* into any superior court, and no warrant of commitment shall be held void by reason of any defect therein, provided it is therein alleged that the defendant has been convicted, and there is a good and valid conviction to sustain the same R. S. C. c. 178, s. 83.

This section takes away the right to a *certiorari* where there has been jurisdiction to make the conviction, even though the decision arrived at be erroneous. R. v. Dunning, 14 O. R. 52.

Where the magistrate has jurisdiction over the offence charged, the court cannot examine the evidence to see if the magistrate had jurisdiction to convict, but it seems where the magistrate had no jurisdiction over the offence, the right to a *certiorari* is not taken away. R. v. Scott, 10 P. R. (Ont.) 517.

Nor is it so taken away when there is a plain excess of jurisdiction by the justice. Hespeler & Shaw, 16 Q. B. (Ont.) 104. So a *certiorari* will lie where there is an absence of jurisdiction in the convicting justice, or a conviction on its face defective in substance. *Re* Watts, 5 P. R. (Ont.) 267; see also *Re* Holland, 37 Q. B. (Ont.) 214.

Under the "Canada Temperance Act," the right to a *certiorari* is taken away in all cases in which the magistrate has jurisdiction. *Ex parte* Orr, 4 Pugs. & Bur. 67.

Where there was a proper information upon oath before the police magistrate of the town of Portland, (N.B.), charging an offence within his jurisdiction, it was held that a party desiring to impugn the correctness of the magistrate's decision should proceed under the (N.B.) 11 V. c. 12, s. 37, the remedy by *certiorari* being taken away. *Ex parte* Abell, 2 Pugs. & Bur. 600.

It would seem that the High Court of Justice has the power to quash a conviction for an illegal adjudication of punishment, notwithstanding such conviction has been appealed against in respect of the adjudication of guilt, and has been affirmed or

affirmed and amended on appeal, and that this 886th section does not take away the right of *certiorari* in the case of an illegal adjudication of punishment, because no appeal lies against such adjudication to the court of general sessions of the peace. McLellan v. McKinnon, 1 O. R. 241. *Per* Armour, J.

Where a defendant has been committed for trial, but afterwards admitted to bail, and discharged from custody, a superior court of law has still power to remove the proceedings on *certiorari*, but in its discretion it will not do so where there is no reason to apprehend that he will not be fairly tried. R. v. Adams, 8 P. R. (Ont.) 462.

A *certiorari* can only issue to remove judicial acts, and it does not extend to ministerial acts or writs of execution. R. v. Simpson, 4 Pugs. & Bur. 472.

A defendant is not entitled to remove proceedings by *certiorari* to a Superior Court from a police magistrate or justice of the peace, after conviction, or at any time for the purpose of moving for a new trial for the rejection of evidence, or because the conviction is against evidence, the conviction not being before the court, and no motion made to quash it. Even if a motion is made to quash, and an order *nisi* applied for upon the magistrate and prosecutor, for a *mandamus* to the former to hear further evidence which he had refused, both motions would be discharged if the magistrate appeared to have acted to the best of his judgment and not wrongfully, and his decision as to the further evidence involved a matter of discretion with which the court would not interfere. R. v. Richardson, 8 O. R. 651.

Where the conviction is for a penalty, the complainant cannot free himself from his liability to costs on *certiorari* by renouncing the conviction, especially if he contest the *certiorari*. A complainant, having obtained a conviction against minors, cannot set up their minority against them when they seek redress from that conviction by means of *certiorari*. Herbert v. Paquet, 11 Q. L. R. 19.

A magistrate may amend his conviction at any time before the return of a *certiorari*, and the court refused to quash because of

the previous return of a bad conviction, especially where this had not been filed. R. v. McCarthy, 11 O. R. 657.

As to filing an amended conviction, the practice in moving to quash a conviction is this: when the conviction is returned it is filed. Up to the time of return and filing, the justice may amend the conviction; but after the filing of the papers no amendment can be made. By analogy to this practice, after notice of appeal is given, and the time for hearing the appeal has arrived, no amendment can be made to the conviction after the proceedings in appeal have been entered on before the court. R. v. Smith, 35 Q. B. (Ont.) 518.

Justices have a right, in a proper case, to put in an amended conviction, to be returned on a *certiorari*, the same being in accordance with the evidence and the adjudication. R. v. Menary, 19 O. R. 691. But they have no right to alter or amend the adjudication of punishment and the amendment can only be to make the conviction conform to the evidence. See R. v. McKenzie, L. R. 2 Q. B. 519 (1892).

After a conviction is returned to the court on a *certiorari* there is no power of amendment. R. v. Mackenzie, 6 O. R. 165; R. v. Allbright, 9 P. R. (Ont.) 25. Where, therefore, two defendants were jointly convicted for keeping liquor for sale without a license, contrary to the R. S. O. c. 194, s. 50, and a penalty awarded against them jointly, it was held that the court could not amend the conviction so as to make separate convictions against each defendant with an award of a separate penalty. R. v. Sutton, 14 C. L. J. N. S. 17.

The affidavit of service of notice of motion for a *certiorari* to remove a conviction, must identify the magistrate served as the convicting magistrate. But if the affidavit is defective in this respect, it may be amended, provided the six calendar months, fixed by the statute (13 Geo. II. c. 18, s. 5), within which the writ may be sued out after conviction, have not elapsed when the motion is made. The objection that the affidavit of service does not identify the convicting justices, is not waived by their attorney accepting service for them and undertaking to shew cause. The

notice need not be served on the private prosecutor. If the writ is granted he should then be served with a rule to shew cause why the conviction should not be quashed. *Re* Lake, 42 Q. B. (Ont.) 206.

A conviction once regularly brought into and put upon the files of the court, is there for all purposes, and a defendant may move to quash it, no matter how or at whose instance it was brought there; as long as it was brought there regularly, the right remains. Where, therefore, on an application for a *habeas corpus*, under the R. S. C. c. 70, a *certiorari* had issued under s. 5, and in obedience to the *certiorari*, the conviction had been returned, the conviction was quashed on motion, though there had been no notice to the magistrate or recognizance as required by the 13 Geo. II. c. 18, s. 5. R. v. Wehlan, 45 Q. B. (Ont.) 396. The rule is different if the *certiorari* is not regularly and properly before the court. R. v. McAllan, 45 Q. B. (Ont.) 402.

This section, it would seem, does not prevent the issue of the writ at the suit of the prosecutor. R. v. Allen, 15 East, 333.

The section does not prevent the issue of a *certiorari* when the notice of appeal to the sessions is void, and the appeal is dismissed. For instance, if the notice is for the next sittings of the court, where the conviction is *within* fourteen days of such sittings. In such case it cannot be said that there is an appeal, or that the conviction is "affirmed or affirmed and amended in appeal" under the statute. R. v. Caswell, 33 Q. B. (Ont.) 303.

The section not only applies to cases where an adjudication has taken place, but even where the appeal has gone off on a preliminary objection to the right of entering it, and consequently a *certiorari* will not be granted by the Superior Court even when the appeal to the sessions has not been decided on the merits. R. v. Firmin, 6 P. R. (Ont.) 67.

877. 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. R. S. C. c. 178, s. 84.

This section is retrospective in its operation and applies to convictions, whether made before or after the passing of the Act, and the right to a *certiorari* is taken away upon service of notice of appeal to the sessions that being the first proceeding on an appeal from the conviction. R. v. Lynch, 12 O. R. 372.

The defendant gave notice of appeal, perfected security, and took out a summons under section 736 of "The Liquor License Act, 1889," of the province of Manitoba, but abandoned it without service, and this was held an appeal, taking away the right to a *certiorari* except in respect of objections going to the jurisdiction of the justices. R. v. Starkey, 7 M. L. R. 43. Affirmed in appeal, *Ib.* 489.

888. Every justice before whom any person is summarily tried, shall transmit the conviction or order to the court to which the appeal is herein given, in and for the district, county or place wherein the offence is alleged to have been committed, before the time when an appeal from such conviction or order may be heard, there to be kept by the proper officer among the records of the court; and if such conviction or order has been appealed against, and a deposit of money made, such justice shall return the deposit into the said court; and the conviction or order shall be presumed not to have been appealed against, until the contrary is shown.

2. Upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence. R. S. C. c. 178. s. 86; 51 V. c. 45, s. 9.

The former statute did not expressly apply to orders; now both must be transmitted to the court charged with the disposal of the appeal.

When the conviction is appealed against the fines should be paid to the convicting justice to abide the event, and the latter should deposit them with the court to which the appeal is given. Chinamen v. Westminster, 2 B. C. L. R. (Hunter) 168. See s. 880 (c).

Section 628 of the Code gives the requisites of an indictment for any indictable offence committed after a previous conviction, and s. 633 provides that the mere statement in the second indictment of intention or circumstances of aggravation tending, if proved, to increase the punishment shall not prevent the previous

acquittal or conviction from being a bar to the subsequent indictment. An acquittal or conviction of murder is a bar to a second indictment for the same homicide charging it as manslaughter and a previous acquittal or conviction on an indictment for manslaughter shall be a bar to a second indictment for the same homicide charging it as murder. Section 676 of the Code gives the proceedings when a previous conviction is charged.

A certificate containing the substance and effect only, omitting the formal part, of any previous indictment and conviction for any indictable offence, or a copy of any summary conviction, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court before which the offender was first convicted, or to which such summary conviction was returned, or by the deputy of such clerk or officer, shall, upon proof of the identity of the person of the offender, be sufficient evidence of such conviction without proof of the signature or official character of the person appearing to have signed the same. R. S. C. c. 174, s. 230; Code, s. 694.

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

As to proof of the previous conviction of a witness. See Code, s. 695.

Where a prisoner is tried for an offence in respect of which no additional punishment can be imposed by reason of a prior conviction, and the prisoner in his defence gives evidence of good character, it has been held that it is not competent for the Crown to give evidence of a previous conviction for a similar offence in rebuttal of the evidence as to character and such rebutting testimony can only be of the same nature as that adduced by the prisoner. R. v. Triganzie, 15 O. R. 294.

But now the latter part of the 676th section of the Code, provides, that if upon the trial of any person for any such subsequent offence, such person gives evidence of his good character, the

prosecutor may, in answer thereto, give evidence of the conviction of such person for the previous offence or offences, before such verdict of guilty is returned, and the jury shall inquire concerning such previous conviction or convictions at the same time that they inquire concerning such subsequent offence.

But in the ordinary case of a summary conviction for one offence the prosecutor is not entitled to give evidence in reply if the defendant has not adduced any evidence other than as to his general character. Code, s. 856 (3).

On the hearing of a summons for keeping a dog without a license, it was proved that the defendant had previously been convicted of the same offence. This previous conviction though proved at the hearing was not set out in the information or summons but the court nevertheless held it to be a second conviction which should be dealt with as such. Murray v. Thompson, 16 Cox, 554.

Where a party is sought to be convicted as for a second offence, he must be charged in the information with the commission of a second offence, and it must also be proved that at the time of the information he had been previously convicted. R. v. Justices, etc., 2 Pugsley, 485.

889. No conviction or order made by any justice of the peace and no warrant for enforcing the same, shall, on being removed by *certiorari* be held invalid for any irregularity, informality or insufficiency therein, provided that the court or judge before which or whom the question is raised is, upon perusal of the depositions, satisfied that an offence of the nature described in the conviction, order or warrant, has been committed, over which such justice has jurisdiction, and that the punishment imposed is not in excess of that which might have been lawfully imposed for the said offence; and any statement which, under this Act or otherwise, would be sufficient if contained in a conviction, shall also be sufficient if contained in an information, summons, order or warrant: Provided that the court or judge, where so satisfied as aforesaid, shall, even if the punishment imposed or the order made is in excess of that which might lawfully have been imposed or made, have the like powers in all respects to deal with the case as seems just as are by section eight hundred and eighty-three conferred upon the court to which an appeal is taken under the provisions of section eight hundred and seventy-nine. R. S. C. c. 178, s. 87; 53 V. c. 37, s. 27.

890. The following matters amongst others shall be held to be within the provisions of the next preceding section:—

(*a*) The statement of the adjudication, or of any other matter or thing, in the past tense instead of in the present;

(*b*) The punishment imposed being less than the punishment by law assigned to the offence stated in the conviction or order, or to the offence which appears by the depositions to have been committed:

(*c*) The omission to negative circumstances, the existence of which would make the act complained of lawful, whether such circumstances are stated by way of exception or otherwise in the section under which the offence is laid, or are stated in another section.

2. But nothing in this section contained shall be construed to restrict the generality of the wording of the next preceding section. R. S. C. c. 178, s. 88.

An information for an offence against "The Canada Temperance Act," charged that it was committed, "within the space of three months last past," and did not state that the Act was in force in the place where the defendant was alleged to have committed the offence. No objection to the jurisdiction was taken before the police magistrate who tried the defendant. The defendant appeared, submitted to the jurisdiction, was called as a witness for the prosecution, gave evidence as to the offence alleged against him and was convicted. The depositions showed that an offence of the nature described had been committed. It was held no objection to the information that it did not state the particular date of the offence, or that the Act was in force in the place where it was alleged to have been committed, and in any case that these defects were cured by the above section. R. v. Collier, 12 P. R. (Ont.) 316.

This section cannot be invoked if the punishment imposed is in excess of that which might have been lawfully imposed for the offence. R. v. Wright, 14 O. R. 668.

Thus where a conviction under s. 6 of the R. S. C. c. 158, which provides for imprisonment only on non-payment of the fine, directed distress on non-payment of the fine and in default of sufficient distress, imprisonment; it was held that the conviction could not be maintained. R. v. Logan, 16 O. R. 335.

In such a case as above the appropriate form WW of conviction should be used.

This section will cure a defect in a conviction not showing on its face that the offence was committed within the jurisdiction of

the magistrate, if upon the depositions it is clear that the offence was there committed. R. v. Perrin, 16 O. R. 446.

This section applies to a conviction under s. 205 of the Code as to lotteries, and will cure a defect in a conviction for disposing of property by any mode of chance. R. v. Freeman, 18 O. R. 524.

In a conviction under s. 73 of the R. S. O. c. 194, for delivering liquor to a person while intoxicated, imprisonment was directed without any provision for distress. Under s. 88, distress should precede imprisonment. On the conviction being brought before the court on *certiorari*, the conviction was amended by inserting a provision for distress. The amending Act came into force after the conviction was made and *certiorari* granted, but the amendment being matter of procedure only, it was held that the court had power to act under it and make the amendment. R. v. Flynn, 20 O. R. 638.

891. If an application is made to quash a conviction or order made by a justice, on the ground that such justice has exceeded his jurisdiction, the court or judge to which or whom the application is made, may, as a condition of quashing the same, if the court or judge thinks fit so to do, provide that no action shall be brought against the justice who made the conviction, or against any officer acting under any warrant issued to enforce such conviction or order. R. S. C. c. 178, s. 89.

The usual practice where the justice has not been guilty of any misconduct, is to protect him from an action.

892. The court having authority to quash any conviction, order or other proceeding by or before a justice may prescribe by general order that no motion to quash any conviction, order or other proceeding by or before a justice and brought before such court by *certiorari*, shall be entertained unless the defendant is shown to have entered into a recognizance with one or more sufficient sureties, before a justice or justices of the county or place within which such conviction or order has been made, or before a judge or other officer, as may be prescribed by such general order, or to have made a deposit to be prescribed in like manner, with a condition to prosecute such writ of *certiorari* at his own costs and charges, with effect, without any wilful or affected delay, and, if ordered so to do, to pay the person in whose favour the conviction, order or other proceeding is affirmed, his full costs and charges to be taxed according to the course of the court where such conviction, order or proceeding is affirmed. R. S. C. c. 178, s. 90.

The Act takes effect from its passing, whether the general order is then promulgated or not. In Ontario the judges of the High Court of Justice passed the following order, under the authority of the former Act:—"No motion shall be entertained by this court, or by any division of the same, or by any judge of a division sitting for the court, or in chambers, to quash a conviction, order or other proceeding which has been made by or before a justice of the peace (as defined by the Act) and brought before the court by *certiorari*, unless the defendant is shown to have entered into a recognizance, with one or more sufficient sureties, in the sum of $100, before a justice or justices of the county or place within which such conviction or order has been made, or before a judge of the county court of the said county, or before a judge of the superior court, and which recognizance, with an affidavit of the due execution thereof, shall be filed with the registrar of the court in which such motion is made or pending, or unless the defendant is shown to have made a deposit of the like sum of $100 with the registrar of the court in which such motion is made, with or upon the condition that he will prosecute such *certiorari* at his own cost and charges, and without any wilful or affected delay, and that he will pay the person in whose favour the conviction, order, or other proceeding is affirmed his full costs and charges, to be taxed according to the course of the court, in case such conviction, order, or proceeding is affirmed."

In R. v. Richardson, 13 P. R. (Ont.) 303, applications for orders *nisi* to quash convictions were refused upon the ground of non-compliance with this rule.

Under this section and the rule of court thereunder, the sureties must be sufficient, and their sufficiency is not shown by the mere production of the recognizance, but there must be evidence on which the court can say they were sufficient. Where, therefore, there was no affidavit of justification to the recognizance, it was held not to comply with the statute and rule. R. v. Addison, 17 O. R. 729; see R. S. C. c. 1, s. 7 (30).

893. The second section of the Act of the Parliament of the United Kingdom passed in the fifth year of the reign of His Majesty King George the Second, and chaptered nineteen, shall no longer apply to any conviction, order or other pro-

ceeding by or before a justice in Canada, but the next preceding section of this Act shall be substituted therefor, and the like proceedings may be had for enforcing the condition of a recognizance taken under the said section as might be had for enforcing the condition of a recognizance taken under the said Act of the Parliament of the United Kingdom. R. S. C. c. 178, s. 91.

In the absence of a general order a defendant is not required, on removal by *certiorari* of a conviction against him, to enter into the recognizance as to costs formerly required under the Imperial Act, 5 Geo. II. c. 19. See R. v. Swalwell, 12 O. R. 391.

894. No order, conviction or other proceeding shall be quashed or set aside, and no defendant shall be discharged, by reason of any objection that evidence has not been given of a proclamation or order of the Governor in Council, or of any rules, regulations, or by-laws made by the Governor in Council in pursuance of a statute of Canada, or of the publication of such proclamation, order, rules, regulations or by-laws in the *Canada Gazette;* but such proclamation, order, rules, regulations and by-laws and the publication thereof shall be judicially noticed. 51 V. c. 45, s. 10.

The 56 V. c. 31, s. 8, prescribes the method of proving any proclamation, order, regulation or appointment, made or issued by the Governor-General or by the Governor-in-Council, or by or under the authority of any minister or head of any department of the Government of Canada. Section 9 relates to the proof of proclamations, etc., made or issued by the Lieutenant-Governor. The usual modes are: (1) by production of the *Canada Gazette*, or a volume of the statutes; (2) by a copy printed by the Queen's Printer; (3) by a copy or extract duly certified.

895. If a motion or rule to quash a conviction, order or other proceeding is refused or discharged, it shall not be necessary to issue a writ of *procedendo*, but the order of the court refusing or discharging the application shall be a sufficient authority for the registrar or other officer of the court forthwith to return the conviction, order and proceedings to the court or justice from which or whom they were removed, and for proceedings to be taken thereon for the enforcement thereof, as if a *procedendo* had issued, which shall forthwith be done. R. S. C. c. 178, s. 93.

Under this section the actual issue of a writ of *procedendo* is no longer necessary. See R. v. Starkey, 7 M. L. R. 43.

896. Whenever it appears by the conviction that the defendant has appeared and pleaded, and the merits have been tried, and the defendant has not appealed against the conviction, where an appeal is allowed, or if appealed against, the conviction has been affirmed, such conviction shall not afterwards be set aside or

vacated in consequence of any defect of form whatever, but the construction shall be such a fair and liberal construction as will be agreeable to the justice of the case. R. S. C. c. 178, s. 94.

897. If upon any appeal the court trying the appeal orders either party to pay costs, the order shall direct the costs to be paid to the clerk of the peace or other proper officer of the court, to be paid over by him to the person entitled to the same, and shall state within what time the costs shall be paid. R. S. C. c. 178, s. 95.

It seems doubtful whether under this section an order of sessions, simply ordering costs of an appeal to be paid, without directing them to be paid to the clerk of the peace as required by the Act, is regular. *Re* Delaney v. MacNab, 21 C. P. (Ont.) 563.

898. If such costs are not paid within the time so limited, and the person ordered to pay the same has not been bound by any recognizance conditioned to pay such costs, the clerk of the peace or his deputy, on application of the person entitled to the costs, or of any person on his behalf, and on payment of any fee to which he is entitled, shall grant to the person so applying, a certificate that the costs have not been paid; and upon production of the certificate to any justice in and for the same territorial division, such justice may enforce the payment of the costs by warrant of distress in manner aforesaid, and in default of distress may commit the person against whom the warrant has issued in manner hereinbefore mentioned, for any term not exceeding one month, unless the amount of the costs and all costs and charges of the distress and also the costs of the commitment and conveying of the party to prison, if the justice thinks fit so to order (the amount thereof being ascertained and stated in the commitment), are sooner paid. The said certificate shall be in the form PPP and the warrants of distress and commitment in the forms QQQ and RRR respectively in schedule one to this Act. R. S. C. c. 178, s. 96.

The issuing of a warrant of commitment under this section is discretionary, not compulsory, upon a justice of the peace, and the court will therefore, on this ground, as well as upon the ground that the party sought to be committed has not been made a party to the application, refuse a *mandamus* against the justice to compel the issue of the warrant. The proper course, where justices refuse to act according to the duties of their office, is to proceed under the R. S. O. c. 73, s. 6. *Re* Delaney v. MacNab, 21 C. P. (Ont.) 563.

A justice of the peace who convicts, and issues a warrant regularly by virtue of a statute then in force, cannot be held liable by reason of the *execution* of the warrant after the Act is disallowed

by Her Majesty and has ceased to be in force. Clapp v. Lawrason, 6 O. S. 319. The statute law would seem to protect a justice in a case of this kind. See R. S. C. c. 1, s. 7, (49), (52), (53).

899. An appellant may abandon his appeal by giving to the opposite party notice in writing of his intention six clear days before the sitting of the court appealed to, and thereupon the costs of the appeal shall be added to the sum if any adjudged against the appellant by the conviction or order, and the justice shall proceed on the conviction or order, as if there had been no appeal. R. S. O. (1887), c. 74, s. 8.

900. In this section the expression "the court" means and includes any superior court of criminal jurisdiction for the province in which the proceedings herein referred to are carried on.

2. Any person aggrieved, the prosecutor or complainant as well as the defendant, who desires to question a conviction, order, determination or other proceeding of a justice under this part, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to such justice to state and sign a case setting forth the facts of the case and the grounds on which the proceeding is questioned, and if the justice declines to state the case, may apply to the court for an order requiring the case to be stated.

3. The application shall be made and the case stated within such time and in such manner as is, from time to time, directed by rules or orders under section five hundred and thirty-three of this Act.

4. The appellant at the time of making such application, and before a case is stated and delivered to him by the justice, shall in every instance, enter into a recognizance before such justice or any other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the justice seems meet, conditioned to prosecute his appeal without delay, and to submit to the judgment of the court and pay such costs as are awarded by the same; and the appellant shall, at the same time, and before he shall be entitled to have the case delivered to him, pay to the justice such fees as he is entitled to; and the appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same justice, or such other justice as is then sitting, within ten days after the judgment of the court has been given, to abide such judgment, unless the judgment appealed against is reversed.

5. If the justice is of opinion that the application is merely frivolous, but not otherwise, he may refuse to state a case, and shall on the request of the applicant sign and deliver to him a certificate of such refusal; provided that the justice shall not refuse to state a case where the application for that purpose is made to him by or under the direction of Her Majesty's Attorney-General of Canada, or of any province.

6. Where the justice refuses to state a case, it shall be lawful for the appellant to apply to the court, upon an affidavit of the facts, for a rule calling upon the

justice, and also upon the respondent, to show cause why such case should not be stated; and such court may make such rule absolute, or discharge the application, with or without payment of costs, as to the court seems meet; and the justice upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as hereinbefore provided.

7. The court to which a case is transmitted under the foregoing provisions shall hear and determine the question or questions of law arising thereon, and shall thereupon affirm, reverse or modify the conviction order or determination in respect of which the case has been stated, or remit the matter to the justice with the opinion of the court thereon, and may make such other order in relation to the matter, and such orders as to costs, as to the court seems fit; and all such orders shall be final and conclusive upon all parties: Provided always, that any justice who states and delivers a case in pursuance of this section shall not be liable to any costs in respect or by reason of such appeal against his determination.

8. The court for the opinion of which a case is stated shall have power, if it thinks fit, to cause the case to be sent back for amendment; and thereupon the same shall be amended accordingly, and judgment shall be delivered after it has been amended.

9. The authority and jurisdiction hereby vested in the court for the opinion of which a case is stated may, subject to any rules and orders of court in relation thereto, be exercised by a judge of such court sitting in chambers, and as well in vacation as in term time.

10. After the decision of the court in relation to any such case stated for their opinion, the justice in relation to whose determination the case has been stated, or any other justice exercising the same jurisdiction, shall have the same authority to enforce any conviction, order or determination which has been affirmed, amended or made by such court as the justice who originally decided the case would have had to enforce his determination if the same had not been appealed against; and no action or proceeding shall be commenced or had against a justice for enforcing such conviction, order or determination by reason of any defect in the same.

11. If the court deems it necessary or expedient any order of the court may be enforced by its own process.

12. No writ of *certiorari* or other writ shall be required for the removal of any conviction, order or other determination in relation to which a case is stated under this section or otherwise, for obtaining the judgment or determination of a superior court on such case under this section.

13. In all cases where the conditions, or any of them, in any recognizance entered into in pursuance of this section have not been complied with, such recognizance shall be dealt with in like manner as is provided by section eight hundred and seventy-eight with respect to recognizances entered into thereunder.

14. Any person who appeals under the provisions of this section against any determination of a justice from which he is entitled to an appeal under section

eight hundred and seventy-nine of this Act, shall be taken to have abandoned such last mentioned right of appeal finally and conclusively and to all intents and purposes.

15. Where, by any special Act, it is provided that there shall be no appeal from any conviction or order, no proceedings shall be taken under this section in any case to which such provision in such special Act applies. 53 V. c. 37, s. 28.

Although section 879 of the Code expressly applies to an order of dismissal, it seems that this section does not.

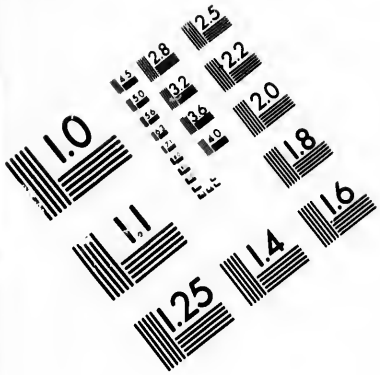
Section 533 (*b*) of the Code gives power to make rules in relation to the foregoing proceedings for stating a case.

This form of appeal by way of a special case is entirely a creature of the statute. When several justices join in the conviction the application must be made to them all. Two out of five justices convicting have no power to state a case. Westmore v. Paine, 16 Cox, 244; L. R. 1 Q. B. 482 (1891).

The intention of the legislature was that in future on questions of law and questions which might arise as to the jurisdiction of the magistrate the party aggrieved should have a right of appeal; and where a question of law arises there is a right to have a case stated. R. v. Bridge, 24 Q. B. D. 609.

In Ontario, 52 V. c. 15, s. 5, enables a justice to state a case for the opinion of the court of appeal. But the power is confined expressly to the constitutional validity in point of law of a provincial statute under the authority of which the justice has determined summarily any information or complaint which he has power to determine in a summary way. It is the validity of the statute which gives the justice jurisdiction and upon which he acts in determining the particular complaint which alone can be enquired into. The section seems not in terms to authorize an enquiry into the validity of an act which regulates or is assumed to regulate some matter of procedure in the course of the case, as for example the rejection of evidence, or what may be deemed evidence, or sufficient or *prima facie* evidence, being matters which are collateral to the main question of the magistrate's jurisdiction to entertain the information at all. R. v. Edwards, 19 A. R. 706.

901. Whenever a warrant of distress has issued against any person, and such person pays or tenders to the peace officer having the execution of the same, the



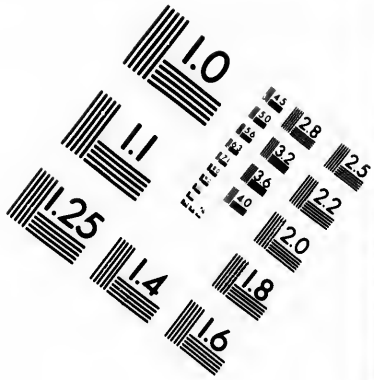
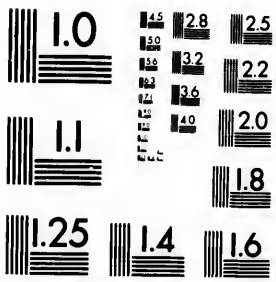
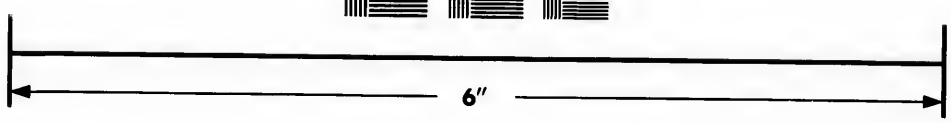
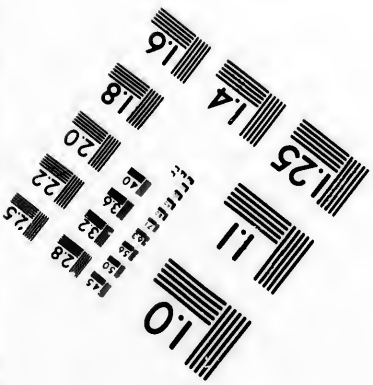
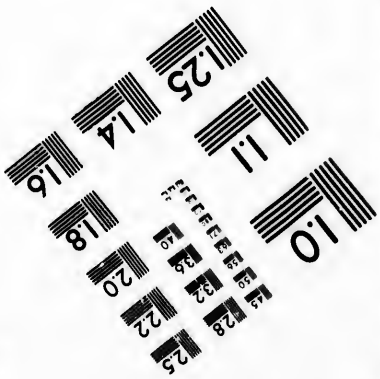


IMAGE EVALUATION
TEST TARGET (MT-3)









Photographic
Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

sum or sums in the warrant mentioned, together with the amount of the expenses of the distress up to the time of payment or tender, the peace officer shall cease to execute the same. R. S. C. c. 198, s. 97.

2. Whenever any person is imprisoned for non-payment of any penalty or other sum, he may pay or cause to be paid to the keeper of the prison in which he is imprisoned, the sum in the warrant of commitment mentioned, together with the amount of the costs and charges and expenses therein also mentioned, and the keeper shall receive the same, and shall thereupon discharge the person, if he is in his custody for no other matter. He shall also forthwith pay over any moneys so received by him to the justice who issued the warrant. R. S. C. c. 198, s. 98.

Under this section there is no authority to detain for any sum not mentioned in the warrant of commitment. There cannot be a detention for costs of conveying to gaol indorsed on the back of the warrant by the constable. Mechiam v. Horne, 20 O. R. 267.

902. Every justice shall, quarterly, on or before the second Tuesday in each of the months of March, June, September and December in each year, make to the clerk of the peace or other proper officer of the court having jurisdiction in appeal, as herein provided, a return in writing, under his hand, of all convictions made by him, and of the receipt and application by him of the moneys received from the defendants,—which return shall include all convictions and other matters not included in some previous return, and shall be in the form SSS in schedule one to this Act.

2. If two or more justices are present, and join in the conviction, they shall make a joint return.

3. In the province of Prince Edward Island such return shall be made to the clerk of the court of assize of the county in which the convictions are made, and on or before the fourteenth day next before the sitting of the said court next after such convictions are so made.

4. Every such return shall be made in the said district of Nipissing, in the province of Ontario, to the clerk of the peace for the county of Renfrew, in the said province. R. S. C. c. 178, s. 99.

5. Every justice, to whom any such moneys are afterwards paid, shall make a return of the receipts and application thereof, to the court having jurisdiction in appeal as hereinbefore provided,—which return shall be filed by the clerk of the peace or the proper officer of such court with the records of his office. R. S. C. c. 178, s. 100.

6. Every justice, before whom any such conviction takes place or who receives any such moneys, who neglects or refuses to make such return thereof, or wilfully makes a false, partial or incorrect return, or wilfully receives a larger amount of fees than by law he is authorized to receive, shall incur a penalty of eighty dollars, together with costs of suit, in the discretion of the court, which may be recovered

by any person who sues for the same by action of debt or information in any court of record in the province in which such return ought to have been or is made. R. S. C. c. 178, s. 101.

7. One moiety of such penalty shall belong to the person suing, and the other moiety to Her Majesty, for the public uses of Canada.

The return is to be to the court to which the appeal is herein given. The 879th section of the Code shows what courts have jurisdiction in each province and the return must be to these courts. Thus in Quebec, the return is to the Court of Queen's Bench, Crown side; in Ontario, to the Court of General Sessions of the Peace; in Nova Scotia, New Brunswick and Manitoba, to the County Court. Ward v. Reed, 22 S. C. N. B. 279.

If the conviction as returned is defective in form, the justice may make out another according to the evidence adduced before him and return it to the sessions. R. v. Bennett, 3 O. R. 45.

The clerk of the peace is the clerk of all magistrates, and it is no objection that a conviction is not in the magistrate's office, but in that of the clerk of the peace. R. v. Yeomans, 6 P. R. (Ont.) 66.

The fact of the conviction being appealed from, does not relieve the justices from the penalty on non-return of the conviction, under the R. S. O. c. 76. Murphy q. t. v. Harvey, 9 C. P. (Ont.) 528; see also Kelly q. t. v. Cowan, 18 Q. B. (Ont.) 104.

And it seems that notice of appeal against the conviction or subsequent notice of abandonment thereof, given by the defendant, does not affect the duty of the justice in making the return. McLennan q. t. v. McIntyre, 12 C. P. (Ont.) 546.

So the question as to the conviction being right or wrong is immaterial, and where a magistrate has actually convicted and imposed a fine, it is no defence that he had no jurisdiction to convict. Bagley q. t. v. Curtis, 15 C. P. (Ont.) 366; O'Reilly q. t. v. Allan, 11 Q. B. (Ont.) 411.

The illegality of a conviction is no excuse for not returning it, but if on that account the fine has not been levied, a return should be made explaining the circumstances. O'Reilly q. t. v. Allan, 11 Q. B. (Ont.) 411; see, however, Spillane v. Wilton, 4 C. P. (Ont.) 236, 242. Under the former statute, a justice of the peace was

liable to a separate penalty of £20, for each conviction of which a return was not properly made to the sessions, and an action for the penalty would lie on proof of the conviction and fine imposed although no record thereof had been made by the justice. Donogh q. t. v. Longworth, 8 C. P. (Ont.) 437.

So as the law now stands, the neglect of the justice to return the convictions made by him as prescribed, renders him liable under this statute to a separate penalty for *each* conviction not returned, and not merely to one penalty for not making a general return of such convictions. Darragh q. t. v. Paterson, 25 C. P. (Ont.) 529.

Justices of the peace must therefore now return all 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 the conviction. Corsant q. t. v. Taylor, 23 C. P. (Ont.) 607; see also Ollard q. t. v. Owens, 29 Q. B. (Ont.) 515.

The R. S. O. c. 76, is now in force as to all convictions over which Ontario has jurisdiction. Under the former statute in Ontario, the penalty attached on *each* justice making default in the return. Metcalf q. t. v. Reeve, 9 Q. B. (Ont.) 263.

And the effect of the Act in Ontario is to require justices of the peace where more than one take part in a conviction to make an immediate return and sign it before separating and if this is not done it is not sufficient to make the return before action brought. Atwood q. t. v. Rosser, 30 C. P. (Ont.) 628.

The Dominion Legislature has made a single penalty of $80, the maximum fine for any default, whether it be committed by a single justice or by two or more, and if two or more justices act and are in default, the penalty on all is single, only $80, and it seems that all the justices might be sued together, or any one of them, at the election of the plaintiff. Drake q. t. v. Preston, 34 Q. B. (Ont.) 257.

It is conceived that the R. S. O. c. 76, s. 3, assimilates the law in Ontario, to that prevailing under the Dominion Act, and that there is not now in Ontario a separate penalty on *each* of several justices joining in a conviction.

An action brought against a justice for non-return by fraud and collusion, in order to prevent the justice being liable to pay the penalty to others, will not bar a subsequent action brought in good faith for the penalty. Kelly q. t. v. Cowan, 18 Q. B. (Ont.) 104.

A justice committed and fined the plaintiff for carrying away some cordwood. After notice of appeal, the prosecutor, finding that the conviction was improper, went to the justice who drew for him a notice of discontinuance which was served on the person, acting as attorney for the plaintiff, before the meeting of the next quarter sessions. The justice sent a general return to that court including this and another conviction, but ran his pen through the entry of this conviction, leaving the writing, however, quite legible, and wrote at the end of it "this case withdrawn by the plaintiff." This was held a sufficient return within the 4 and 5 V. c. 12; Ball q. t. v. Fraser, 18 Q. B. (Ont.) 100.

It has been held that if one justice, of several who convict makes the return and signs the name of the other convicting justices to it by their direction, or express authority, it is sufficient. McLellan q. t. v. Brown, 12 C. P. (Ont.) 542.

It seems that there must be a return of the conviction in the form given by the statute, and transmitting the conviction itself is not the same thing as making a return of it, though one return may include several convictions. The conviction and the return of it are separate instruments and both should be returned by the justice. See McLennan q. t. v. McIntyre, 12 C. P. (Ont.) 546; Donogh q. t. v. Longworth, 8 C. P. (Ont.) 437.

In an action for the penalty the plaintiff may sue for himself only, and need not sue *qui tam*. Drake q. t. v. Preston, 34 Q. B. (Ont.) 257; but the statement of claim must allege the defendant's neglect to have been contrary to the statutes, not merely the statute, there being two statutes upon the subject, each requiring a different return. *Ib.*

In an action against a justice of the peace, for a penalty in not returning a conviction, it is no objection to the statement of claim that the plaintiff sues for the Receiver-General, and not for Her Majesty the Queen; inasmuch as suing for a penalty for the

Receiver-General for the public uses of the province, is in fact suing for the Queen. Bagley q. t. v. Curtis, 15 C. P. (Ont.) 366.

A conviction made by an alderman in a city, must be returned to the next ensuing general sessions of the peace for the county, and not to the recorder's court for such city. Keenahan q. t. v. Egleson, 22 Q. B. (Ont.) 626; see Metcalfe q. t. v. Reeve, 9 Q. B. (Ont.) 263.

An order for the payment of money under "The Master and Servants Act," R. S. O. c. 139, is not a conviction which it is necessary to return to the sessions. Ranney q. t. v. Jones, 21 Q. B. (Ont.) 370.

The county courts have now jurisdiction to try an action for a penalty against a justice of the peace, where the penalty claimed does not exceed $80. Brash q. t. v. Taggart, 16 C. P. (Ont.) 415. This case does not over-rule O'Reilly q. t. v. Allan, 11 Q. B. (Ont.) 526, there having been changes in the jurisdiction of the county courts since it was decided. See also Medcalfe v Widdefield, 12 C. P. (Ont.) 411.

A plaintiff suing a justice of the peace for the penalty of $80, under the the R. S. O. c. 76, s. 3, for not returning a conviction, is entitled to full costs without a certificate. Stinson q.t. v. Guess, 1 U. C. L. J. N. S., 19 following O'Reilly q.t. v. Allan, 11 Q.B. (Ont.) 526.

A penal action for not returning a conviction is founded on tort and for that reason cannot be brought in a Division Court. Corsant q.t. v. Taylor, 10 C. L. J. N. S. 320.

It would seem that the right to legislate on returns of convictions and fines for criminal offences, belongs to the Dominion and not the Provincial Legislature. Clemens q.t. v. Beemer, 7 C. L. J. N. S. 126.

The Inland Revenue Act, R. S. C. c. 34, s. 113, prescribes that "the penalty or forfeiture incurred for any offence against the provisions of the Act, may be sued for and recovered before any two justices of the peace * * and any such penalty may, if not forthwith paid, be levied by distress, * * or the said justices may in their discretion commit the offender to the common goal until the penalty be paid. The plaintiff, who was tried under the above

Act for distilling spirits without a license before the defendant and three other justices of the peace, and was ordered to pay $200, sued the defendant for not making a return under the R. S. O. c. 76. The court held that the defendant was liable, as the adjudication in question was a conviction within the meaning of the statute, and not a mere order for the payment of money. May q.t. v. Middleton, 3 A. R. 207.

This section is not *ultra vires*, the penalty may be recovered in the county court, and no notice of action is required. Ward v. Reed, 22 S. C. N. B. 279.

903. The clerk of the peace of the district or county in which any such returns are made, or the proper officer, other than the clerk of the peace, to whom such returns are made, shall, within seven days after the adjournment of the next ensuing General or Quarter Sessions, or of the term or sitting of such other court as aforesaid, cause the said returns to be posted up in the court-house of the district or county, and also in a conspicuous place in the office of such clerk of the peace, or other proper officer, for public inspection, and the same shall continue to be so posted up and exhibited until the end of the next ensuing General or Quarter Sessions of the Peace, or of the term or sitting of such other court as aforesaid; and for every schedule so made and exhibited by such clerk or officer, he shall be allowed such fee as is fixed by competent authority. R. S. C. c. 178, s. 103.

2. Such clerk of the peace or other officer of each district or county, within twenty days after the end of each General or Quarter Sessions of the Peace, or the sitting of such court as aforesaid, shall transmit to the Minister of Finance and Receiver-General a true copy of all such returns made within his district or county. R. S. C. c. 178, s. 104.

904. All actions for penalties arising under the provisions of section nine hundred and two shall be commenced within six months next after the cause of action accrues, and the same shall be tried in the district, county or place wherein such penalties have been incurred; and if a verdict or judgment passes for the defendant, or the plaintiff becomes non-suit, or discontinues the action after issue joined, or if, upon demurrer or otherwise, judgment is given against the plaintiff, the defendant shall, in the discretion of the court, recover his costs of suit, as between solicitor and client, and shall have the like remedy for the same as any defendant has by law in any other cases. R. S. C. c. 178, s. 102.

905. Nothing in the three sections next preceding shall have the effect of preventing any person aggrieved from prosecuting, by indictment, any justice, for any offence, the commission of which would subject him to indictment at the time of the coming into force of this Act. R. S. C. c. 178, s. 105.

906. No return purporting to be made by any justice under this Act shall be vitiated by the fact of its including, by mistake, any convictions or orders had or made before him in any matter over which any Provincial Legislature has exclusive jurisdiction, or with respect to which he acted under the authority of any provincial law. R. S. C. c. 178, s. 106.

907. No information, summons, conviction, order or other proceeding shall be held to charge two offences, or shall be held to be uncertain on account of its stating the offence to have been committed in different modes, or in respect of one or other of several articles, either conjunctively or disjunctively, for example, in charging an offence under section five hundred and eight of this Act it may be alleged that "the defendant unlawfully did cut, break, root up and otherwise destroy or damage a tree, sapling or shrub"; and it shall not be necessary to define more particularly the nature of the act done, or to state whether such act was done in respect of a tree, or a sapling, or a shrub. R. S. C. c. 178, s. 107.

A conviction for tampering with a witness contrary to section 121 of the "Canada Temperance Act," charged the defendant with offering the witness money to induce him to leave the county, and also with attempting by threats to induce him to absent himself, and this charge of two offences was held to be cured under the above section. *Ex parte* White, 30 S. C. N. B. 12.

908. Every judge of sessions of the peace, chairman of the court of general sessions of the peace, police magistrate, district magistrate or stipendiary magistrate, shall have such and like powers and authority to preserve order in the said courts during the holding thereof, and by the like ways and means as now by law are or may be exercised and used in like cases and for the like purposes by any court in Canada, or by the judges thereof, during the sittings thereof. R. S. C. c. 178, s. 109.

909. Every judge of the sessions of the peace, chairman of the court of general sessions of the peace, recorder, police magistrate, district magistrate or stipendiary magistrate, whenever any resistance is offered to the execution of any summons, warrant of execution or other process issued by him, may enforce the due execution of the same by the means provided by the law for enforcing the execution of the process of other courts in like cases. R. S. C. c. 178, s. 110.

As amended by 56 V. c. 32.

SCHEDULE ONE—FORMS.

A—(*Section* 557.)

WARRANT TO CONVEY BEFORE A JUSTICE OF ANOTHER COUNTY.

Canada,
Province of ,
County of ,

Whereas information upon oath was this day made before the undersigned that A. B. of , on the day of , in the year , at , in the county of (*state the charge*).

And whereas I have taken the deposition of X. Y. as to the said offence.

And whereas the charge is of an offence committed in the county of .

This is to command you to convey the said (*name of accused*), of , before some justice of the last mentioned county, near the above place, and to deliver to him this warrant and the said deposition.

Dated at , in the said county of , this day of , in the year .

J. S.
J. P. (*Name of county.*)

To of .

B—(*Section* 557.)

RECEIPT TO BE GIVEN TO THE CONSTABLE BY THE JUSTICE FOR THE COUNTY IN WHICH THE OFFENCE WAS COMMITTED.

Canada,
Province of ,
County of ,

I, J. L., a justice of the peace in and for the county of , hereby certify that W. T., peace officer of the county of , has, on this day of , in the year , by virtue of and in obedience to a warrant of J. S., Esquire, a justice of the peace in and for the county of , produced before me one A. B., charged before the said J. S. with having (*etc., stating shortly the offence*), and delivered him into the custody of , by my direction, to answer to the said charge, and further to be dealt with according to law, and has also delivered unto me the said warrant, together with the informa-

tion (*if any*) in that behalf, and the deposition (*s*) of C. D. (*and of*), in the said warrant mentioned, and that he has also proved to me, upon oath, the handwriting of the said J. S. subscribed to the same.

Dated the day and year first above mentioned, at , in the said county of .

J. L.
J. P. (*Name of county*).

C—(*Section* 558.)

INFORMATION AND COMPLAINT FOR AN INDICTABLE OFFENCE.

Canada,
Province of ,
County of ,

The information and complaint of C. D. of , (*yeoman*), taken this day of , in the year , before the undersigned (*one*) of Her Majesty's justices of the peace in and for the said county of , who saith that (*etc., stating the offence*).

Sworn before (*me*), the day and year first above mentioned, at

J. S.
J. P. (*Name of county.*)

D—(*Section* 560.)

WARRANT TO APPREHEND A PERSON CHARGED WITH AN INDICTABLE OFFENCE COMMITTED ON THE HIGH SEAS OR ABROAD.

For offences committed on the high seas the warrant may be the same as in ordinary cases, but describing the offence to have been committed "on the high seas, out of the body of any district or county of Canada and within the jurisdiction of the Admiralty of England."

For offences committed abroad, for which the parties may be indicted in Canada, the warrant also may be the same as in ordinary cases, but describing the offence to have been committed "on land out of Canada, to wit: at in the Kingdom of , *or*, at , in the island of , in the West Indies, *or* at , in the East Indies," *or as the case may be.*

E—(*Section* 562.)

SUMMONS TO A PERSON CHARGED WITH AN INDICTABLE OFFENCE.

Canada,
Province of ,
County of .

To A. B., of , (*labourer*):

Whereas you have this day been charged before the undersigned , a justice of the peace in and for the said county of , for that you on , at , (*stating shortly the offence*): These are therefore to command you, in Her Majesty's name, to be and appear before (*me*) on , at o'clock in the (fore) noon, at , or before such other justice or justices of the peace for the same county of , as shall then be there, to answer to the said charge, and to be further dealt with according to law. Herein fail not.

Given under (*my*) hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

F—(*Section* 563.)

WARRANT IN THE FIRST INSTANCE TO APPREHEND A PERSON CHARGED WITH AN INDICTABLE OFFENCE.

Canada,
Province of ,
County of .

To all or any of the constables and other peace officers in the said county of .

Whereas A. B. of , (*labourer*), has this day been charged upon oath before the undersigned , a justice of the peace in and for the said county of , for that he, on , at , did (*etc., stating shortly the offence*). These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) or some other justice of the peace in and for the said county of), to answer unto the said charge and to be further dealt with according to law.

Given under (*my*) hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

G—(*Section 563.*)

WARRANT WHEN THE SUMMONS IS DISOBEYED.

Canada,
Province of ,
County of .

To all or any of the constables and other peace officers in the said county of

Whereas on the day of , (instant *or* last past) A.B., of , was charged before (*me* or *us*), the undersigned (*or name the justice or justices, or as the case may be*), (*a*) justice of the peace in and for the said county of , for that (*etc., as in the summons*); and whereas I (*or* he *the said justice of the peace, or* we *or they the said justices of the peace*) did then issue (*my, our, his* or *their*) summons to the said A. B., commanding him, in Her Majesty's name, to be and appear before (*me*) on at o'clock in the (fore) noon, at , or before such other justice or justices of the peace as should then be there, to answer to the said charge and to be further dealt with according to law; and whereas the said A. B. has neglected to be or appear at the time and place appointed in and by the said summons, although it has now been proved to (*me*) upon oath that the said summons was duly served upon the said A. B.: These are therefore to command you in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) *or* some other justice of the peace in and for the said county of , to answer the said charge, and to be further dealt with according to law.

Given under (*my*) hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

H—(*Section 565.*)

ENDORSEMENT IN BACKING A WARRANT.

Canada,
Province of ,
County of .

Whereas proof upon oath has this day been made before me , a justice of the peace in and for the said county of , that the name of J. S. to the within warrant subscribed, is of the handwriting of the justice of the peace within mentioned: I do therefore hereby authorize W. T. who brings to me this warrant and all other persons to whom this warrant was originally directed, or by whom it may be lawfully executed, and also all peace officers of the said county of , to execute the same within the said last mentioned county.

Given under my hand, this day of , in the year , at , in the county aforesaid.

J. L.
J. P. (Name of county).

I—(*Section* 569.)

WARRANT TO SEARCH.

Canada,
Province of ,
County of .

Whereas it appears on the oath of A. B. of , that there is reason to suspect that (*describe things to be searched for and offence in respect of which search is made*) are concealed in at .

This is, therefore, to authorize and require you to enter between the hours of (*as the justice shall direct*) into the said premises, and to search for the said things, and to bring the same before me or some other justice.

Dated at , in the said county of , this day of , in the year .

J. S.
J. P. (*Name of county.*)

To of .

J—(*Section* 569.)

IMFORMATION TO OBTAIN A SEARCH WARRANT.

Canada,
Province of ,
County of .

The information of A. B., of , in the said county (*yeoman*), taken this day of , in the year , before me, J. S., Esquire, a justice of the peace, in and for the county (*describe things to be searched for and offence in respect of which search is made*), of , who says that and that he has just and reasonable cause to suspect, and suspects, that the said goods and chattels, or some part of them are concealed in the (*dwelling-house, etc.*) of C. D., of , in the said county, (*here add the causes of suspicion, whatever they may be*): Wherefore (*he*) prays that a search warrant may be granted to him to search the *dwelling house, etc.*), of the said C. D., as aforesaid, for the said goods and chattels so feloniously stolen, taken and carried away as aforesaid.

Sworn (*or* affirmed) before me the day and year first above mentioned, at , in the said county of .

J. S.
J. P. (*Name of county.*)

K—(*Section* 580.)

SUMMONS TO A WITNESS.

Canada,
Province of ,
County of .

To E. F., of , (*labourer*):

Whereas information has been laid before the undersigned , a justice of the peace in and for the said county of , that A. B. (*etc., as in the summons or warrant against the accused*), and it has been made to appear to me upon (*oath*), that you are likely to give material evidence for (*the prosecution*); These are therefore to require you to be and to appear before me, on next, at o'clock in the (fore) noon at, , or before such other justice or justices of the peace of the same county of , as shall then be there, to testify what you know concerning the said charge so made against the said A. B. as aforesaid. Herein fail not.

Given under my hand and seal, this day of in the year at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

L—(*Section* 582.)

WARRANT WHEN A WITNESS HAS NOT OBEYED THE SUMMONS.

Canada,
Province of ,
County of .

To all or any of the constables and other peace officers in the said county of

Whereas information having been laid before , a justice of the peace, in and for the said county of , that A. B. (*etc., as in the summons*); and it having been made to appear to (*me*) upon oath that E. F. of , (*labourer*), was likely to give material evidence for (*the prosecution*), (*I*) duly issued (*my*) summons to the said E. F., requiring him to be and appear before (*me*) on , at , or before such other justice or justices of the peace for the same county, as should then be there, to testify what he knows respecting the said charge so made against the said A. B., as aforesaid; and whereas proof has this day been made upon oath before (*me*) of such summons having been duly served upon the said E. F.; and whereas the said E. F. has neglected to appear at the time and place appointed by the said summons, and no just excuse has been offered for such neglect: These are therefore to command you to bring and have the said E. F. before (*me*) on at o'clock in the (fore) noon, at , or before such other justice or justices

for the same county, as shall then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid.

Given under (*my*) hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

M—(*Section* 583.)

WARRANT FOR A WITNESS IN THE FIRST INSTANCE.

Canada,
Province of ,
County of .

To all or any of the constables and other peace officers in the said county of .

Whereas information has been laid before the undersigned , a justice of the peace, in and for the said county of , that (*etc., as in the summons*); and it having been made to appear to (*me*) upon oath that E. F. of , (*labourer*), is likely to give material evidence for the prosecution, and that it is probable that the said E. F. will not attend to give evidence unless compelled to do so: These are therefore to command you to bring and have the said E. F. before (*me*) on , at o'clock in the (fore) noon, at , or before such other justice or justices of the peace for the same county, as shall then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

N—(*Section* 584.)

WARRANT WHEN A WITNESS HAS NOT OBEYED THE SUBPŒNA.

Canada,
Province of ,
County of .

To all or any of the constables and other peace officers in the said county of .

Whereas information having been laid before , a justice of the peace, in and for the said county, that A. B. (*etc., as in the summons*); and there being reason to believe that E. F. of , in the province of ,

(*labourer*), was likely to give material evidence for (*the prosecution*), a writ of subpœna was issued by order of , judge of (*name of court*) to the said E. F., requiring him to be and appear before (*me*) on , at or before such other justice or justices of the peace for the same county, as should then be there, to testify what he knows respecting the said charge so made against the said A. B., as aforesaid; and whereas proof has this day been made upon oath before (*me*) of such writ of subpœna having been duly served upon the said E. F.; and whereas the said E. F. has neglected to appear at the time and place appointed by the said writ of subpœna, and no just excuse has been offered for such neglect: These are therefore to command you to bring and have the said E. F. before (*me*) on at o'clock in the (fore) noon, at , or before such other justice or justices for the same county as shall then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid.

Given under (*my*) hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county*).

O—(*Section* 585.)

WARRANT OF COMMITMENT OF A WITNESS FOR REFUSING TO BE SWORN OR TO GIVE EVIDENCE.

Canada,
Province of ,
County of .

To all or any of the constables and other peace officers in the county of , and to the keeper of the common gaol at , in the said county of .

Whereas A. B. was lately charged before , a justice of the peace in and for the said county of , for that (*etc., as in the summons*); and it having been made to appear to (*me*) upon oath that E. F. of , was likely to give material evidence for the prosecution (*I*) duly issued (*my*) summons to the said E. F., requiring him to be and appear before me on , at , or before such other justice or justices of the peace for the same county as should then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before (*me*) (*or* being brought before (*me*) by virtue of a warrant in that behalf), to testify as aforesaid, and being required to make oath or affirmation as a witness in that behalf, now refuses so to do (*or* being duly sworn as a witness now refuses to answer certain questions concerning the premises which are now here put to him, and more particularly the following) without offering any just excuse for such refusal: These are therefore to command you, the said constables or

peace officers, or any one of you, to take the said E. F. and him safely to convey to the common gaol at , in the county aforesaid, and there to deliver him to the keeper thereof, together with this precept: And (*I*) do hereby command you, the said keeper of the said common gaol to receive the said E. F. into your custody in the said common gaol, and him there safely keep for the space of days, for his said contempt, unless in the meantime he consents to be examined, and to answer concerning the premises; and for your so doing, this shall be your sufficient warrant.

Given under (*my*) hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

P—(*Section* 586.)

WARRANT REMANDING A PRISONER.

Canada,
Province of ,
County of .

To all or any of the constables and other peace officers in the said county of and to the keeper of the common gaol at , in the said county.

Whereas A. B. was this day charged before the undersigned , a justice of the peace in and for the said county of , for that (*etc., as in the warrant to apprehend*), and it appears to (*me*) to be necessary to remand the said A. B.: These are therefore to command you, the said constables and peace officers, or any of you, in Her Majesty's name, forthwith to convey the said A. B. to the common gaol at , in the said county, and there to deliver him to the keeper thereof, together with this precept. And I hereby command you the said keeper to receive the said A. B. into your custody in the said common gaol, and there safely keep him until the day of (*instant*), when I hereby command you to have him at , at o'clock in the (fore) noon of the same day before (*me*) or before such other justice or justices of the peace for the said county as shall then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

Q--(*Section* 587.)

RECOGNIZANCE OF BAIL INSTEAD OF REMAND ON AN ADJOURNMENT OF EXAMINATION.

Canada,
Province of ,
County of .

Be it remembered that on the day of , in the year , A. B., of , (*labourer*), L. M., of , (*grocer*), and N. O., of , (*butcher*), personally came before me, a justice of the peace for the said county, and severally acknowledged themselves to owe to our Sovereign Lady the Queen, her heirs and successors, the several sums following, that is to say: the said A. B. the sum of , and the said L. M., and N. O., the sum of , each, of good and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively to the use of our said Lady the Queen, her heirs and successors, if he, the said A. B., fails in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned at before me.

J. S.
J. P. (*Name of county.*)

CONDITION.

The condition of the within (*or* above) written recognizance is such that whereas the within bounden A. B. was this day (*or* on last past) charged before me for that (*etc., as in the warrant*); and whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the day of (*instant*): If, therefore, the said A. B. appears before me on the said day of (*instant*), at o'clock in the (fore) noon, or before such other justice or justices of the peace for the said county as shall then be there, to answer (*further*) to the said charge, and to be further dealt with according to law, the said recognizance to be void, otherwise to stand in full force and virtue.

R—(*Section* 589.)

CERTIFICATE OF NON-APPEARANCE TO BE ENDORSED ON THE RECOGNIZANCE.

I hereby certify that the said A. B. has not appeared at the time and place in the above condition mentioned, but therein has made a default, by reason whereof the within written recognizance is forfeited.

J. S
J. P. (*Name of county.*)

—(*Section* 590.)

DEPOSITION OF A WITNESS.

Canada,
Province of ,
County of .

The deposition of X. Y. of , taken before the undersigned, a justice of the peace for the said county of , this day of , in the year , at (*or* after notice to C. D who stands committed for) in the presence and hearing of C. D. who stands charged that (*state the charge*). The said deponent saith on his (*oath or affirmation*) as follows: (*Insert deposition as nearly as possible in words of witness.*)

(*If depositions of several witnesses are taken at the same time, they may be taken and signed as follows:*)

The depositions of X. of , Y. of , Z. of , etc., taken in the presence and hearing of C. D., who stands charged that

The deponent X. (*on his oath or affirmation*) says as follows:

The deponent Y. (*on his oath or affirmation*) says as follows:

The deponent Z. (*on his oath, etc., etc.*)

(*The signature of the justice may be appended as follows:*)

The depositions of X., Y., Z., etc., written on the several sheets of paper, to the last of which my signature is annexed, were taken in the presence and hearing of C. D. and signed by the said X., Y., Z., respectively in his presence. In witness whereof I have in the presence of the said C. D. signed my name.

J. S.
J. P. (*Name of county.*)

T—(*Section* 591.)

STATEMENT OF THE ACCUSED.

Canada,
Province of ,
County of .

A. B. stands charged before the undersigned , a justice of the peace in and for the county aforesaid, this day of , in the year , for that the said A. B., on , at (*etc., as in the captions of the depositions*); and the said charge being read to the said A. B., and the witnesses for the prosecution, C. D. and E. F., being severally examined in his presence, the said A. B. is now addressed by me as follows: "Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so; but whatever you say will be

taken down in writing, and may be given in evidence against you at your trial. You must clearly understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you upon your trial, notwithstanding such promise or threat." Whereupon the said A. B. says as follows: (*Here state whatever the prisoner says and in his very words, as nearly as possible. Get him to sign it if he will.*)

A. B.

Taken before me, at , the day and year first above mentioned.

J. S. [SEAL.]
J. P. (*Name of county.*)

U—(*Section* 595.)

FORM OF RECOGNIZANCE WHERE THE PROSECUTOR REQUIRES THE JUSTICE TO BIND HIM OVER TO PROSECUTE AFTER THE CHARGE IS DISMISSED.

Canada,
Province of ,
County of .

Whereas C. D. was charged before me upon the information of E. F. that C. D. (*state the charge*), and upon the hearing of the said charge I discharged the said C. D., and the said E. F. desires to prefer an indictment against the said C. D. respecting the said charge, and has required me to bind him over to prefer such an indictment at (*here describe the next practicable sitting of the court by which the person discharged would be tried if committed*).

The undersigned E. F. hereby binds himself to perform the following obligation, that is to say, that he will prefer and prosecute an indictment respecting the said charge against the said C. D. at (*as above*). And the said E. F. acknowledges himself bound to forfeit to the Crown the sum of $ in case he fails to perform the said obligation.

E. F.

Taken before me.

J. S.
J. P. (*Name of county.*)

V—(*Section* 596.)

WARRANT OF COMMITMENT.

Canada,
Province of ,
County of .

To the constable of , and to the keeper of the (*common gaol*) at , in the said county of .

Whereas A. B. was this day charged before me, J. S., one of Her Majesty's justices of the peace in and for the said county of , on the oath of C. D. of , (*farmer*), and others, for that (*etc., stating shortly the offence*): These are therefore to command you the said constable to take the said A. B., and him safely to convey to the (*common gaol*) at aforesaid, and there to deliver him to the keeper thereof, together with this precept: And I do hereby command you the said keeper of the said (*common gaol*) to receive the said A. B. into your custody in the said (*common gaol*), and there safely keep him until he shall be thence delivered by due course of law.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

W—(*Section* 598.)

RECOGNIZANCE TO PROSECUTE.

Canada,
Province of ,
County of .

Be it remembered that on the day of , in the year , C. D. of , in the of , in the said county of , (*farmer*), personally came before me , a justice of the peace in and for the said county of , and acknowledged himself to owe to our Sovereign Lady the Queen, her heirs and successors, the sum of , of good and lawful current money of Canada, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Sovereign Lady the Queen, her heirs and successors, if the said C. D. fails in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned at , before me.

J. S.
J. P. (*Name of county.*)

CONDITION TO PROSECUTE.

The condition of the within (*or* above) written recognizance is such that whereas one A. B. was this day charged before me, J. S., a justice of the peace within mentioned, for that (*etc., as in the caption of the depositions*); if, therefore, he the said C. D. appears at the court by which the said A. B. is or shall be tried * and there duly prosecutes such charge then the said recognizance to be void, otherwise to stand in full force and virtue.

X—(*Section* 598.)

COGNIZANCE TO PROSECUTE AND GIVE EVIDENCE.

(*Same as the last form, to the asterisk,* and then thus*) :—And there duly prosecute such charge against the said A. B. for the offence aforesaid, and gives evidence thereon, as well to the jurors who shall then inquire into the said offence, as also to them who shall pass upon the trial of the said A. B., then the said recognizance to be void, or else to stand in full force and virtue.

Y—(*Section* 598.)

COGNIZANCE TO GIVE EVIDENCE.

(*Same as the last form but one, to the asterisk,* and then thus* :—And there gives such evidence as he knows upon the charge to be then and there preferred against the said A. B. for the offence aforesaid, then the said recognizance to be void, otherwise to remain in full force and virtue.

Z—(*Section* 599.)

COMMITMENT OF A WITNESS FOR REFUSING TO ENTER INTO THE RECOGNIZANCE.

Canada,
Province of ,
County of .

To all or any of the peace officers in the said county of . and to the keeper of the common gaol of the said county of , at , in the said county of .

Whereas A. B. was lately charged before the undersigned (*name of the justice of the peace*), a justice of the peace in and for the said county of .

for that (*etc., as in the summons to the witness*), and it having been made to appear to (*me*) upon oath that E. F., of , was likely to give material evidence for the prosecution, (*I*) duly issued (*my*) summons to the said E. F., requiring him to be and appear before (*me*) on , at , or before such other justice or justices of the peace as should then be there, to testify what he knows concerning the said charge so made against the said A. B. as aforesaid; and the said E. F. now appearing before (*me*) (or being brought before (*me*) by virtue of a warrant in that behalf to testify as aforesaid), has been now examined before (*me*) touching the premises, but being by (*me*) required to enter into a recognizance conditioned to give evidence against the said A. B., now refuses so to do: These are therefore to command you the said peace officers, or any one of you, to take the said E. F. and him safely convey to the common gaol at , in the county aforesaid, and there deliver him to the said keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said E. F. into your custody in the said common gaol, there to imprison and safely keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime the said E. F. duly enters into such recognizance as aforesaid, in the sum of before some one justice of the peace for the said county, conditioned in the usual form to appear at the court by which the said A. B. is or shall be tried, and there to give evidence upon the charge which shall then and there be preferred against the said A. B. for the offence aforesaid.

Given under my hand and seal this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

AA—(*Section* 599.)

SUBSEQUENT ORDER TO DISCHARGE THE WITNESS.

Canada,
Province of ,
County of .

To the keeper of the common gaol at , in the county of , aforesaid.

Whereas by (*my*) order dated the day of (*instant*) reciting that A. B. was lately before then charged before (*me*) for a certain offence therein mentioned, and that E. F. having appeared before (*me*) and being examined as a witness for the prosecution on that behalf, refused to enter into recognizance to give evidence against the said A. B., and I therefore thereby committed the said E. F. to your custody, and required you safely to keep him until after the trial

of the said A. B. for the offence aforesaid, unless in the meantime he should enter into such recognizance as aforesaid; and whereas for want of sufficient evidence against the said A. B., the said A. B. has not been committed or holden to bail for the said offence, but on the contrary thereof has been since discharged, and it is therefore not necessary that the said E. F. should be detained longer in your custody: These are therefore to order and direct you the said keeper to discharge the said E. F. out of your custody, as to the said commitment, and suffer him to go at large.

Given under my hand and seal, this day of in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

BB—(*Section* 601.)

RECOGNIZANCE OF BAIL.

Canada
Province of ,
County of .

Be it remembered that on the day of , in the year , A. B. of , (*labourer*), L. M. of , (*grocer*), and N. O. of , (*butcher*), personally came before (*us*) the undersigned, (*two*) justices of the peace for the county of , and severally acknowledged themselves to owe to our Sovereign Lady the Queen, her heirs and successors, the several sums following, that is to say: the said A. B. the sum of , and the said L. M. and N. O. the sum of , each, of good and lawful current money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Sovereign Lady the Queen, her heirs and successors, if he, the said A. B., fails in the condition endorsed (*or*) hereunder written).

Taken and acknowledged the day and year first above mentioned, at before us.

J. S.
J. N.
J. P. (*Name of county.*)

CONDITION.

The condition of the within (*or* above) written recognizance, is such that whereas the said A. B. was this day charged before (*us*), the justices within mentioned for that (*&c., as in the warrant*); if, therefore, the said A. B., appears at the next court of Oyer and Terminer (*or* general gaol delivery *or* court of General or

Quarter Sessions of the Peace) to be holden in and for the county of , and there surrenders himself into the custody of the keeper of the common gaol (*or* lock-up house) there, and pleads to such indictment as may be found against him by the grand jury, for and in respect to the charge aforesaid, and takes his trial upon the same, and does not depart the said court without leave, then the said recognizance to be void, otherwise to stand in full force and virtue.

CC—(*Section* 602.)

WARRANT OF DELIVERANCE ON BAIL BEING GIVEN FOR A PRISONER ALREADY COMMITTED.

Canada,
Province of ,
County of .

To the keeper of the common gaol of the county of at , in the said county.

Whereas A. B. late of , (*labourer*), has before (*us*) (*two*) justices of the peace in and for the said county of , entered into his own recognizance, and found sufficient sureties for his appearance at the next court of Oyer and Terminer or general gaol delivery (*or* court of General or Quarter Sessions of the Peace), to be holden in and for the county of , to answer our Sovereign Lady the Queen, for that (*&c., as in the commitment*), for which he was taken and committed to your said common gaol: These are therefore to command you, in Her Majesty's name, that if the said A. B. remains in your custody in the said common gaol for the said cause, and for no other, you shall forthwith suffer him to go at large.

Given under our hands and seals, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. N. [SEAL.]
J. P. (Name of County.)

DD—(*Section* 607.)

GAOLER'S RECEIPT TO THE CONSTABLE FOR THE PRISONER.

I hereby certify that I have received from W. T., constable, of the county of , the body of A. B., together with a warrant under the hand and seal of J. S., Esquire, justice of the peace for the said county of , and that the said A. B. was sober, (*or as the case may be*), at the time he was delivered into my custody.

P. K.,
Keeper of the common gaol of the said county.

EE—(*Sections* 610 *and* 626.)

HEADING OF INDICTMENT.

In the (*name of the court in which the indictment is found*).

The jurors for our Lady the Queen present that

(*Where there are more counts than one, add at the beginning of each count*):

"The said jurors further present that ."

FF—(*Section* 611.)

EXAMPLES OF THE MANNER OF STATING OFFENCES.

(*a*) A. murdered B. at , on .

(*b*) A stole a sack of flour from a ship called the , at , at , on .

(*c*) A. obtained by false pretenses from B., a horse, a cart and the harness of a horse at , on .

(*d*) A. committed perjury with intent to procure the conviction of B. for an offence punishable with penal servitude, namely robbery, by swearing on the trial of B. for the robbery of C. at the court of quarter sessions for the county of Carleton, held at Ottawa, on the day of , 1879; first, that he, A. saw B. at Ottawa, on the day of ; secondly, that B. asked A. to lend B. money on a watch belonging to C.; thirdly, etc.

or

(*e*) The said A. committed perjury on the trial of B. at a court of quarter sessions held at Ottawa, on for an assault alleged to have been committed by the said B. on C. at Ottawa, on the day of by swearing to the effect that the said B. could not have been at Ottawa, at the time of the alleged assault, inasmuch as the said A. had seen him at that time in Kingston.

(*f*) A., with intent to main, disfigure, disable or do grevious bodily harm to B. or with intent to resist the lawful apprehension or detainer of A. (*or* C.), did actual bodily harm to B. (*or* D).

(*g*) A., with intent to injure or endanger the safety of persons on the Canadian Pacific Railway, did an act calculated to interfere with an engine, a tender, and certain carriages on the said railway on at by (*describe with so much detail as is sufficient to give the accused reasonable information as to the acts or omissions relied on against him, and to identify the transaction*).

(*h*) A. published a defamatory libel on B. in a certain newspaper, called the , on the day of A. D. , which libel was contained in an article headed or commencing (*describe with so much detail as is sufficient to give the accused reasonable information as to the part of the publication to be relied on against him*), and which libel was written in the sense of imputing that the said B. was (*as the case may be*).

GG—(*Section* 648.)

CERTIFICATE OF INDICTMENT BEING FOUND.

Canada,
Province of ,
County of .

I hereby certify that at a court of (oyer and terminer, *or* general gaol delivery, *or* general sessions of the peace) holden in and for the county of , at , in the said (county), on , a bill of indictment was found by the grand jury against A. B., therein described as A. B., late of (*labourer*), for that he (*etc., stating shortly the offence*), and that the said A. B. has not appeared or pleaded to the said indictment.

Dated this day of , in the year .

Z. X.
(*Title of officer.*)

HH—(*Section* 648.)

WARRANT TO APPREHEND A PERSON INDICTED.

Canada,
Province of ,
County of .

To all or any of the constables and other peace officers in the said county of .

Whereas it has been duly certified by J. D., clerk of the (*name the court*) (*or* E.G., deputy clerk of the Crown *or* clerk of the peace, *or as the case may be*), in and for the county of , that (*&c., stating the certificate*). These are therefore to command you in Her Majesty's name forthwith to apprehend the said A. B., and to bring him before (*me*) or some other justice or justices of the peace in and for the said county to be dealt with according to law.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

II—(*Section* 648.)

WARRANT OF COMMITMENT OF A PERSON INDICTED.

Canada
Province of , }
County of . }

To all or any of the constables and other peace officers in the said county of , and the keeper of the common gaol, at , in the said county of .

Whereas by a warrant under the hand and seal of , (*a*) justice of the peace in and for the said county of , dated after reciting that it had been certified by J. D., (*&c., as in the certificate*), the said justice of the peace commanded all or any of the constables or peace officers of the said county, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*him*) the said justice of the peace or before some other justice or justices in and for the said county, to be dealt with according to law; and whereas the said A. B. has been apprehended under and by virtue of the said warrant, and being now brought before (*me*) it is hereupon duly proved to (*me*) upon oath that the said A. B. is the same person who is named and charged as aforesaid in the said indictment: These are therefore to command you, the said constables and peace officers, or any of you, in her Majesty's name, forthwith to take and convey the said A. B. to the said common gaol at , in the said county of , and there to deliver him to the keeper thereof together with this precept; and (*I*) hereby command you the said keeper to receive the said A. B., into your custody in the said gaol, and him there safely to keep until he shall thence be delivered by due course of law.

Given under (*my*) hand and seal, this day of in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county*).

JJ—(*Section* 648.)

WARRANT TO DETAIN A PERSON INDICTED WHO IS ALREADY IN CUSTODY FOR ANOTHER OFFENCE.

Canada,
Province of , }
County of . }

To the keeper of the common gaol at in the said county of

Whereas it has been duly certified by J. D., clerk of the (*name the court*) (*or* deputy clerk of the Crown *or* clerk of the peace of and for the county of

, *or as the case may be*) that (*&c., stating the certificate*); And whereas *I am*) informed that the said A. B. is in your custody in the said common gaol at aforesaid, charged with some offence, or other matter; and it being now duly proved upon oath before (*me*) that the said A. B., so indicted as aforesaid, and the said A. B., in your custody, as aforesaid, are one and the same person: These are therefore to command you, in Her Majesty's name, to detain the said A. B. in your custody in the common gaol aforesaid, until by writ of *habeas corpus* he shall be removed therefrom, for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of your custody by due course of law

Given under (*my*) hand and seal, this day of in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

FORMS UNDER PART LVIII.

VV—(*Section* 859)

CONVICTION FOR A PENALTY TO BE LEVIED BY DISTRESS, AND IN DEFAULT OF SUFFICIENT DISTRESS, BY IMPRISONMENT.

Canada,
Province of ,
County of .

Be it remembered, that on the day of in the year , at , in the said county, A. B. is convicted before the undersigned , a justice of the peace, for the said county, for that the said A. B., (*&c., stating the offence, and the time and place when and where committed*), and I adjudge the said A. B. for his said offence to forfeit and pay the sum of , (*stating the penalty, and also the compensation, if any*), to be paid and applied according to law, and also to pay to the said C. D. the sum of , for his costs in this behalf; and if the said several sums are not paid forthwith, (*or* on or before the of next), * I order that the same be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress, * I adjuge the said A. B. to be imprisoned in the common gaol of the said county, at , in the said county of , (there to be kept at hard labour, *if such is the sentence*) for the term of , unless the

said several sums and all costs and charges of the said distress (and of the commitment and conveying of the said A. B. to the said gaol) are sooner paid.

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

J. S. [SEAL.]
J. P. (Name of county.)

* *Or when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears he has no goods whereon to levy a distress, then instead of the words between the asterisks* *say,* "inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," (*or,* "that the said A. B. has no goods or chattels whereon to levy the said sums by distress").

WW—(*Section* 859.)

CONVICTION FOR A PENALTY AND IN DEFAULT OF PAYMENT IMPRISONMENT.

Canada,
Province of ,
County of .

Be it remembered that on the day of in the year , at , in the said county, A. B. is convicted before the undersigned, , a justice of the peace for the said county for that he the said A. B. (*&c., stating the offence, and the time and place when and where it was committed*), and I adjudge the said A. B. for his said offence to forfeit and pay the sum of (*stating the penalty, and the compensation, if any*) to be paid and applied according to law; and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums are not paid forthwith, (*or,* on or before next) I adjudge the said A. B. to be imprisoned in the common gaol of the said county, at in the said county of (and there to be kept at hard labour) for the term of , unless the said sums and the costs and charges of conveying the said A. B to the said common gaol are sooner paid.

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

J. S. [SEAL.]
J. P. (Name of county.)

XX—(*Section* 859.)

CONVICTION WHEN THE PUNISHMENT IS BY IMPRISONMENT, ETC.

Canada,
Province of ,
County of .

Be it remembered that on the day of , in the year , at , in the said county, A. B. is convicted before the undersigned, , a justice of the peace in and for the said county, for that he the said A. B. (*&c., stating the offence and the time and place when and where it was committed*); and I adjudge the said A. B. for his said offence to be imprisoned in the common gaol of the said county, at , in the county of (and there to be kept at hard labour) for the term of ; and I also, adjudge the said A. B. to pay to the said C. D. the sum of , for his costs in this behalf, and if the said sum for costs are not paid forthwith (*or on or before* next,) then * I order that the said sum be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress in that behalf, * I adjudge the said A. B. to be imprisoned in the said common gaol (and kept there at hard labour) for the term of , to commence at and from the term of his imprisonment aforesaid, unless the said sum for costs is sooner paid.

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

J. S. [SEAL.]
J. P. (Name of county.)

* *Or, when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks * * say,* "inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," (*or,* "that the said A. B. has no goods or chattels whereon to levy the said sum for costs by distress").

YY—(*Section* 859.)

ORDER FOR PAYMENT OF MONEY TO BE LEVIED BY DISTRESS AND IN DEFAULT OF DISTRESS IMPRISONMENT.

Canada,
Province of ,
County of .

Be it remembered that on , complaint was made before the undersigned, , a justice of the peace in and for the said county of , for that (*stating the facts entitling the complainant to the order, with the time and place*

when and where they occurred), and now at this day, to wit, on , at , the parties aforesaid appear before me the said justice (*or* the said C. D. appears before me the said justice, but the said A. B., although duly called, does not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me on oath that the said A. B. was duly served with the summons in this behalf, which required him to be and appear here on this day before me or such justice or justices of the peace for the county, as should now be here, to answer the said complaint, and to be further dealt with according to law); and now having heard the matter of the said complaint, I do adjudge the said A. B. to pay to the said C. D. the sum of forthwith (*or* on or before next, *or as the Act or law requires*), and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums are not paid forthwith (*or* on or before next), then, * I hereby order that the same be levied by distress and sale of the goods and chattels of the said A. B. and in default of sufficient distress in that behalf * I adjudge the said A. B. to be imprisoned in the common gaol of the said county, at , in the said county of , (and there kept at hard labour) for the term of , unless the said several sums, and all costs and charges of the said distress (and the commitment and conveyance of the said A.B. to the common gaol) are sooner paid.

Given under my hand and seal, this day of in the year , at in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

* *Or, when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears he has no goods whereon to levy a distress, then, instead of the words between the asterisks * * say* "inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," (*or* "that the said A. B. has no goods or chattels whereon to levy the said sums by distress.")

ZZ—(*Section* 859.)

ORDER FOR PAYMENT OF MONEY, AND IN DEFAULT OF PAYMENT IMPRISONMENT.

Canada,
Province of, }
County of .

Be it remembered that on , complaint was made before the undersigned, , a justice of the peace in and for the said county of , for that (*stating the facts entitling the complainant to the order, with the time and place*

when and where they occurred), and now on this day, to wit, on , at , the parties aforesaid appear before me the said justice (*or* the said C. D. appears before me the said justice, but the said A. B. although duly called, does not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me upon oath that the said A. B. was duly served with the summons in this behalf, which required him to be and appear here this day before me, or such justice or justices of the peace for the said county, as should now be here, to answer to the said complaint, and to be further dealt with according to law), and now having heard the matter of the said complaint, I do adjudge the said A. B. to pay to the said C. D. the sum of forthwith (*or* on or before next, *or as the Act or law requires*), and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums are not paid forthwith (*or* on or before next), then I adjudge the said A. B. to be imprisoned in the common gaol of the said county at , in the said county of , (there to be kept at hard labour *if the Act or law authorizes this*) for the term of unless the said several sums (and costs and charges of commitment and conveying the said A. B. to the said common gaol) are sooner paid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

AAA—(*Section* 859.)

ORDER FOR ANY OTHER MATTER WHERE THE DISOBEYING OF IT IS PUNISHABLE WITH IMPRISONMENT.

Canada,
Province of ,
County of ,

Be it remembered that on , complaint was made before the undersigned, , a justice of the peace in and for the said county of , for that (*stating the facts entitling the complainant to the order, with the time and place where and when they occurred*); and now on this day, to wit, on , at , the parties aforesaid appear before me the said justice (*or* the said C D. appears before me the said justice, but the said A. B., although duly called, does not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me, upon oath, that the said A. B. was duly served with the summons in this behalf, which required him to be and appear here this day before me, or such justice or justices of the peace for the said county, as should now be here to answer to the said complaint and to be further dealt with according to law; and

now having heard the matter of the said complaint, I do adjudge the said A. B. to (*here state the matter required to be done*), and if, upon a copy of the minute of this order being served upon the said A. B., either personally or by leaving the same for him at his last or most usual place of abode, he neglects or refuses to obey the same, in that case I adjudge the said A. B., for such his disobedience, to be imprisoned in the common gaol of the said county, at , in the said county of , (there to be kept at hard labour, *if the statute authorizes this*), for the term of unless the said order is sooner obeyed, and I do also adjudge the said A. B. to pay to the said C. D. the sum of for his costs in this behalf, and if the said sum for costs is not paid forthwith (*or* on or before next), I order the same to be levied by distress and sale of the goods and chattels of the said A. B. and in default of sufficient distress in that behalf I adjudge the said A. B. to be imprisoned in the said common gaol (there to be kept at hard labour) for the space of , to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs is sooner paid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (Name of county.)

BBB.—(*Section* 862.)

FORM OF ORDER OF DISMISSAL OF AN INFORMATION OR COMPLAINT.

Canada,
Province of ,
County of .

Be it remembered that on , information was laid (*or* complaint was made) before the undersigned, a justice of the peace in and for the said county of , for that (*etc., as in the summons for the defendant*) and now at this day, to wit, on , at , (*if at any adjournment insert here:* "to which day the hearing of this case was duly adjourned, of which the said C. D. had due notice,") both the said parties appear before me in order that I should hear and determine the said information (*or* complaint) *or* the said A. B. appears before me, but the said C. D. although duly called, does not appear); [whereupon the matter of the said information (*or* complaint) being by me duly considered, it manifestly appears to me that the said information (*or* complaint) is not proved, and] (*if the informant or complainant does not appear, these words may be omitted,*) I do therefore dismiss the same, and do adjudge that the said C. D. do pay to the said A. B. the sum of , for his costs incurred by him in defence of this behalf; and if the said sum for costs is not paid forthwith (*or* on or before

), I order that the same be levied by distress and sale of the goods and chattels of the said C. D., and in default of sufficient distress in that behalf, I adjudge the said C. D. to be imprisoned in the common gaol of the said county of , at , in the said county of (and there kept at hard labour) for the term of , unless the said sum for costs, and all costs and charges of the said distress (and of the commitment and conveying of the said C. D. to the said common gaol) are sooner paid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

CCC—(*Section* 862.)

FORM OF CERTIFICATE OF DISMISSAL.

Canada,
Province of ,
County of ,

I hereby certify that an information (*or* complaint) preferred by C. D. against A. B. for that (*etc., as in the summons*) was this day considered by me, a justice of the peace in and for the said county of , and was by me dismissed (with costs).

Dated at , this day of , in the year .

J. S.
J. P. (*Name of county*).

DDD—(*Section* 872.)

WARRANT OF DISTRESS UPON A CONVICTION FOR A PENALTY.

Canada,
Province of ,
County of .

To all or any of the constables and other peace officers in the said county of .

Whereas A. B., late of , (*labourer*), was on this day (*or* on last past) duly convicted before , a justice of the peace, in and for the said county of , for that (*stating the offence, as in the conviction*), and it was thereby adjudged that the said A. B. should for such his offence, forfeit and

pay (*etc., as in the conviction*), and should also pay to the said C. D. the sum of , for his costs in that behalf; and it was thereby ordered that if the said several sums were not paid (forthwith) the same should be levied by distress and sale of the goods and chattels of the said A. B., and it was thereby also adjudged that the said A. B., in default of sufficient distress, should be imprisoned in the common gaol of the said county, at , in the said county of (and there kept at hard labour) for the space of , unless the said several sums and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said common gaol were sooner paid; *And whereas the said A. B., being so convicted as aforesaid, and being (now) required to pay the said sums of and has not paid the same or any part thereof, but therein has made default: These are, therefore, to command you, in Her Majesty's name forthwith to make distress of the goods and chattels of the said A. B.; and if within days next after the making of such distress, the said sums, together with the reasonable charges of taking and keeping the distress, are not paid then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale unto me, the convicting justice (*or* one of the convicting justices), that I may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said A. B.; and if no such distress is found, then to certify the same unto me, that such further proceedings may be had thereon as to law appertain.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

EEE—(*Section* 872.)

WARRANT OF DISTRESS UPON AN ORDER FOR THE PAYMENT OF MONEY.

Canada,
Province of ,
County of .

To all or any of the peace officers in the said county of .

Whereas on , last past, a complaint was made before , a justice of the peace in and for the said county, for that (*etc., as in the order*), and afterwards, to wit, on , at , the said parties appeared before (*as in the order*), and thereupon the matter of the said complaint having been considered, the said A. B. was adjudged to pay to the said C. D. the sum of , on or before then next, and also to pay to the said C. D. the sum of , for his costs in that behalf; and it was ordered that if the said

several sums were not paid on or before the said then next, the same should be levied by distress and sale of the goods and chattels of the said A. B.; and it was adjudged that in default of sufficient distress in that behalf, the said A. B. should be imprisoned in the common gaol of the said county, at , in the said county of (and there kept at hard labour) for the term of , unless the said several sums and all costs and charges of the distress (and of the commitment and conveying of the said A. B. to the said common gaol) were sooner paid; *And whereas the time in and by the said order appointed for the payment of the said several sums of , and has elapsed, but the said A. B. has not paid the same, or any part thereof, but therein has made default: These are, therefore, to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B.; and if within the space of days after the making of such distress, the said last mentioned sums, together with the reasonable charges of taking and keeping the said distress, are not paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale unto me (*or some other of the convicting justices, as the case may be*), that I (*or* he) may pay or apply the same as by law directed, and may render the overplus, if any, on demand to the said A. B.; and if no such distress can be found, then to certify the same unto me, to the end that such proceedings may be had therein, as to law appertain.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county*)

FFF—(*Section* 872.)

WARRANT OF COMMITMENT UPON CONVICTION FOR A PENALTY IN THE FIRST INSTANCE.

Canada,
Province of ,
County of .

To all or any of the constables and other peace officers in the said county of , and to the keeper of the common gaol of the said county of , at in the said county of .

Whereas A. B. late of , (*labourer*), was on this day convicted before the undersigned , a justice of the peace in and for the said county, for that (*stating the offence as in the conviction*), and it was thereby adjudged that the said A. B., for his offence, should forfeit and pay the sum of (*etc., as in the conviction*), and should pay to the said C. D. the sum of , for his costs in that behalf; and it was thereby further adjudged that if the said several sums

were not paid (forthwith) the said A. B. should be imprisoned in the common gaol of the county, at , in the said county of (and there kept at hard labour) for the term of , unless the said several sums (and the costs and charges of conveying the said A. B. to the said common gaol) were sooner paid; and whereas the time in and by the said conviction appointed for the payment of the said several sums has elapsed, but the said A. B. has not paid the same, or any part thereof, but therein has made default: These are, therefore, to command you, the said peace officers, or any one of you, to take the said A. B., and him safely to convey to the common gaol at aforesaid, and there to deliver him to the said keeper thereof, together with this precept. And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him (and keep him at hard labour) for the term of , unless the said several sums (and costs and charges of carrying him to the said common gaol, amounting to the further sum of), are sooner paid unto you, the said keeper: and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

GGG—(*Section* 872.)

WARRANT OF COMMITMENT ON AN ORDER IN THE FIRST INSTANCE.

Canada,)
Province of ,)
County of .)

To all or any of the constables and other peace officers in the said county of , and to the keeper of the common gaol of the county of , at in the said county of .

Whereas, on last past, complaint was made before the undersigned, , a justice of the peace in and for the said county of , for that (*etc., as in the order*), and afterwards, to wit, on the day of , at A. B. and C. D. appeared before me, the said justice (*or as it is in the order*), and thereupon having considered the matter of the complaint, I adjudged the said A. B. to pay the said C. D. the sum of , on or before the day of then next, and also to pay to the said C. D. the sum of , for his costs in that behalf; and I also thereby adjudged that if the said several sums were not paid on or before the day of then next, the said A. B. should be imprisoned in the common gaol of the county of , at , in the said county of

(and there be kept at hard labour) for the term of , unless the said several sums (and the costs and charges of conveying the said A. B. to the said common gaol, *as the case may be*) were sooner paid; And whereas the time in and by the said order appointed for the payment of the said several sums of money has elapsed, but the said A. B. has not paid the same, or any part thereof, but therein has made default: These are, therefore, to command you, the said peace officers, or any of you, to take the said A. B. and him safely to convey to the said common gaol, at aforesaid, and there to deliver him to the keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him (and keep him at hard labour) for the term of unless the said several sums (and the costs and charges of conveying him to the said common gaol, amounting to the further sum of), are sooner paid unto you the said keeper; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

HHH—(*Section* 874.)

ENDORSEMENT IN BACKING A WARRANT.

Canada,
Province of ,
County of .

Whereas proof upon oath has this day been made before me , a justice of the peace in and for the said county, that the name of J. S. to the within warrant subscribed is of the handwriting of the justice of the peace within mentioned, I do therefore authorize W. T., who brings me this warrant, and all other persons to whom this warrant was originally directed, or by whom the same may be lawfully executed, and also all peace officers in the said county of , to execute the same within the said county.

Given under my hand, this day of , one thousand eight hundred and .

O. K.
J. P. (*Name of county.*)

III– (*Section* 872.)

CONSTABLE'S RETURN TO A WARRANT OF DISTRESS.

I, W. T., constable, of , in the county of hereby certify to J. S., Esquire, a justice of the peace in and for the county of , that by virtue of this warrant I have made diligent search for the goods and chattels of the within mentioned A. B., and that I can find no sufficient goods or chattels of the said A. B. whereon to levy the sums within mentioned.

Witness my hand, this day of , one thousand eight hundred and .

W. T.

JJJ—(*Section* 872.)

WARRANT OF COMMITMENT FOR WANT OF DISTRESS.

Canada,
Province of ,
County of .

To all or any of the constables and other peace officers in the county of , and to the keeper of the common gaol of the said county of , at , in the said county.

Whereas (*etc., as in either of the foregoing distress warrants,* DDD or EEE, *to the asterisk,* and then thus*): And whereas, afterwards on the day of , in the year aforesaid, I, the said justice, issued a warrant to all or any of the peace officers of the county of , and by distress and sale of the goods and chattels of the said A. B.; And whereas it appears to me, as well by the return of the said warrant of distress, by the peace officer who had the execution of the same, as otherwise, that the said peace officer has made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sums above mentioned could be found: These are, therefore, to command you, the said peace officers, or any one of you, to take the said A. B., and him safely to convey to the common gaol at , aforesaid, and there deliver him to the said keeper, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody, in the said common gaol, there to imprison him (and keep him at hard labour) for the term of , unless the said several sums, and all the costs and charges of the said distress (and of the commitment and conveying of the said A. B. to the said common gaol) amounting to the further sum of ,

are sooner paid unto you, the said keeper; and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

KKK—(*Section* 873.)

WARRANT OF DISTRESS FOR COSTS UPON AN ORDER FOR DISMISSAL OF AN INFORMATION OR COMPLAINT.

Canada,
Province of ,
District of .

To all or any of the constables and other peace officers in the said county of

Whereas on last past, information was laid (*or* complaint was made) before a justice of the peace in and for the said county of , for that (*etc., as in the order of dismissal*) and afterwards, to wit, on , at , both parties appearing before , in order that (I) should hear and determine the same, and the several proofs adduced to (me) in that behalf, being by (me) duly heard and considered, and it manifestly appearing to (me) that the said information (*or* complaint) was not proved, (I) therefore dismissed the same and adjudged that the said C. D. should pay to the said A. B. the sum of , for his costs incurred by him in his defence in that behalf; and (I) ordered that if the said sum for costs was not paid (forthwith) the same should be levied on the goods and chattels of the said C. D., and (I) adjudged that in default of sufficient distress in that behalf the said C. D. should be imprisoned in the common gaol of the said county of , at , in the said county of (and there kept at hard labour) for the space of , unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said common gaol, were sooner paid; *And whereas the said C. D. being now required to pay to the said A. B. the said sum for costs, has not paid the same, or any part thereof, but therein has made default: These are, therefore, to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said C. D., and if within the term of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale to (*me*) that (I), may pay and apply the same as by law directed, and may render the overplus (if any)

on demand to the said C. D., and if no distress can be found, then to certify the same unto *me* (or to any other justice of the peace for the same county), that such proceedings may be had therein as to law appertain.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

LLL—(*Section* 873.)

WARRANT OF COMMITMENT FOR WANT OF DISTRESS.

Canada,
Province of ,
County of .

To all or any of the constables and other peace officers in the said county of and to the keeper of the common gaol of the said county of , at in the said county of .

Whereas (*etc., as in form KKK to the asterisk,* and then thus*): And whereas afterwards, on the day of , in the year aforesaid, I, the said justice, issued a warrant to all or any of the peace officers of the said county, commanding them, or any one of them, to levy the said sum of , for costs, by distress and sale of the goods and chattels of the said C. D.: And whereas it appears to me, as well by the return to the said warrant of distress of the peace officer charged with the execution of the same, as otherwise, that the said peace officer has made diligent search for the goods and chattels of the said C. D., but that no sufficient distress whereon to levy the sum above mentioned could be found: These are, therefore, to command you, the said peace officers, or any one of you, to take the said C. D., and him safely convey to the common gaol of the said county, at aforesaid, and there deliver him to the keeper thereof, together with this precept: And I hereby command you, the said keeper of the said common gaol, to receive the said C. D. into your custody in the said common gaol, there to imprison him (and keep him at hard labour) for the term of , unless the said sum, and all the costs and charges of the said distress (and of the commitment and conveying of the said C. D. to the said common gaol, amounting to the further sum of), are sooner paid unto you the said keeper; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county.*)

MMM—(*Section* 878.)

CERTIFICATE OF NON-APPEARANCE TO BE ENDORSED ON THE DEFENDANT'S RECOGNIZANCE.

I hereby certify that the said A. B. has not appeared at the time and place in the said condition mentioned, but therein has made default, by reason whereof the within written recognizance is forfeited.

J. S. [SEAL.]
J. P. (*Name of county.*)

NNN—(*Section* 880.)

NOTICE OF APPEAL AGAINST A CONVICTION OR ORDER.

To C. D., of , and (*the names and additions of the parties to whom the notice of appeal is required to be given*).

Take notice, that I, the undersigned, A. B., of intend to enter and prosecute an appeal at the next general sessions of the peace (*or other court, as the case may be*), to be holden at , in and for the county of , against a certain conviction (*or* order) bearing date on or about the day of , instant, and made by (you) J. S., Esquire, a justice of the peace in and for the said county of , whereby I, the said A. B. was convicted of having (*or* was ordered) to pay , (*here state the offence as in the conviction, information, or summons, or the amount adjudged to be paid, as in the order, as correctly as possible.*

Dated at , this day of , one thousand eight hundred and .

A. B.

MEMORANDUM.—*If this notice is given by several defendants, or by an attorney, it may be adapted to the case.*

OOO—(*Section* 880.)

FORM OF RECOGNIZANCE TO TRY THE APPEAL.

Canada,
Province of ,
County of .

Be it remembered that on , A. B., of , (*labourer*), and L. M., of (*grocer*), and N. O., of , (*yeoman*), personally came before the undersigned, a justice of the peace in and for the said county of , and severally acknowledged themselves to owe to our Sovereign Lady the Queen, the several sums following, that is to say, the said A. B. the sum of , and the said L. M. and N. O. the sum of , each, of good and lawful money

of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, her heirs and successors, if he the said A. B. fails in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned at , before me.

J. S.

J. P. (*Name of county.*)

The condition of the within (*or* the above) written recognizance is such that if the said A. B. personally appears at the (next) general sessions of the peace (*or other court discharging the functions of the court of general sessions, as the case may be*), to be holden at , on the day of , next, in and for the said county of , and tries an appeal against a certain conviction, bearing date the day of , (*instant*), and made by (me) the said justice, whereby he, the said A. B., was convicted, for that he, the said A. B., did, on the day of , at , in the said county of , (*here set out the offence as stated in the conviction*); and also abides by the judgment of the court upon such appeal and pays such costs as are by the court awarded, then the said recognizance to be void, otherwise to remain in full force and virtue.

FORM OF NOTICE OF SUCH RECOGNIZANCE TO BE GIVEN TO THE APPELLANT AND HIS SURETIES.

Take notice, that you, A. B., are bound in the sum of , and you L. M. and N. O. in the sum of , each, that you the said A. B. will personally appear at the next General Sessions of the Peace to be holden at , in and for the said county of , and try an appeal against a conviction (*or* order) dated the day of , (*instant*) whereby you A. B. were convicted of (*or* ordered, &c.), (*stating offence or the subject of the order shortly*), and abide by the judgment of the court upon such appeal and pay such costs as are by the court awarded, and unless you the said A. B. personally appear and try such appeal and abide by such judgment and pay such costs accordingly, the recognizance entered into by you will forthwith be levied on you, and each of you.

Dated at , this day of , one thousand eight hundred and .

PPP—(*Section* 898.)

CERTIFICATE OF CLERK OF THE PEACE THAT THE COSTS OF AN APPEAL ARE NOT PAID.

Office of the clerk of the peace for the county of .

Title of the Appeal.

I hereby certify that a Court of General Sessions of the Peace, (*or other court discharging the functions of the Court of General Sessions, as the case may be*), holden

at , in and for the said county, on last past, an appeal by A. B. against a conviction (*or* order) of J. S., Esquire, a justice of the peace in and for the said county, came on to be tried, and was there heard and determined, and the said Court of General Sessions (*or other court, as the case may be*) thereupon ordered that the said conviction (*or* order) should be confirmed (*or* quashed), and that the said (appellant) should pay to the said (respondent) the sum of , for his costs incurred by him in the said appeal, and which sum was thereby ordered to be paid to the clerk of the peace for the said county, on or before the day of (*instant*), to be by him handed over to the said (respondent), and I further certify that the said sum for costs has not, nor has any part thereof, been paid in obedience to the said order.

Dated at , this day of , one thousand eight hundred and .

G. H.
Clerk of the Peace.

QQQ—(*Section* 898.)

WARRANT OF DISTRESS FOR COSTS OF AN APPEAL AGAINST A CONVICTION OR ORDER.

Canada,)
Province of , }
County of ,)

To all or any of the constables and other peace officers in the said county of .

Whereas (*&c., as in the warrants of distress, DDD or EEE, and to the end of the statement of the conviction or order, then thus*): And whereas the said A. B. appealed to the Court of General Sessions of the Peace (*or other court discharging the functions of the Court of General Sessions, as the case may be*), for the said county, against the said conviction or order, in which appeal the said A. B. was the appellant, and the said C. D. (*or* J. S., Esquire, the justice of the peace who made the said conviction *or* order) was the respondent, and which said appeal came on to be tried and was heard and determined at the last General Sessions of the Peace (*or other court, as the case may be*) for the said county, holden at , on ; and the said court thereupon ordered that the said conviction (*or* order) should be confirmed (*or* quashed) and that the said (appellant) should pay to the said (respondent) the sum of , for his costs incurred by him in the said appeal, which said sum was to be paid to the clerk of the peace for the said county, on or before the day of , one thousand eight hundred and , to be by him handed over to the said C. D.; and whereas the clerk of the peace of the said county has, on the day of (*instant*), duly certified that the said sum for costs had not been paid: * These are, therefore, to

command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said A. B., and if, within the term of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, are not paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale to the clerk of the peace for the said county of , that he may pay and apply the same as by law directed; and if no such distress can be found, then to certify the same unto me or any other justice of the peace for the same county, that such proceeding may be had therein as to law appertain.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

O. K. [SEAL.]
J. P. (Name of county.

RRR– (*Section* 898.)

WARRANT OF COMMITMENT FOR WANT OF DISTRESS IN THE LAST CASE.

Canada,
Province of ,
County of ,

To all or any of the constables and other peace officers in the said county of .

Whereas (*&c., as in form QQQ, to the asterisk * and then thus*): And whereas, afterwards, on the day of , in the year aforesaid, I, the undersigned, issued a warrant to all or any of the peace officers in the said county of , commanding them, or any of them, to levy the said sum of , for costs, by distress and sale of the goods and chattels of the said A. B. And whereas it appears to me, as well by the return to the said warrant of distress of the peace officer who was charged with the execution of the same, as otherwise, that the said peace officer has made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the said sum above mentioned could be found: These are, therefore, to command you, the said peace officer, or any one of you, to take the said A. B., and him safely to convey to the common gaol of the said county of , at aforesaid, and there deliver him to the said keeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him (and keep him at hard labour) for the term of , unless the said sum and all costs and charges of the said distress (and for the commitment and conveying of the said A. B. to the said common gaol, amounting to the further sum of),

are sooner paid unto you, the said keeper; and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of in the year , at , in the county aforesaid.

O. K. [SEAL.]
J. P. (*Name of county.*)

SSS—(*Section* 902.)

RETURN of convictions made by me (*or* us, *as the case may be*), during the quarter ending , 18 .

Name of the Prosecutor.	Name of the Defendant.	Nature of the Charge.	Date of Conviction.	Name of Convicting Justice.	Amount of Penalty. Fine or Damage.	Time when paid or to be paid to the said Justice.	To whom paid over by the said Justice.	If not paid, why not, and general observations if any.

J. S., Convicting Justice.
or
J. S. and O. K., Convicting Justices, (*as the case may be*).

WWW—(*Section* 959.)

COMPLAINT BY THE PARTY THREATENED, FOR SURETIES FOR THE PEACE.

Canada,
Province of ,
County of .

The information (*or* complaint) of C. D., of , in the said county of , (*labourer*), (*if preferred by an attorney or agent, say*—by D. E., his duly

authorized agent (*or* attorney), in this behalf), taken upon oath, before me, the undersigned, a justice of the peace, in and for the said county of , at in the said county of , this day of , in the year , who says that A. B., of in the said county, did, on the day of (instant *or* last past), threaten the said C. D. in the words or to the effect following, that is to say: (*set them out, with the circumstances under which they were used*); and that from the above and other threats used by the said A. B. towards the said C. D., he, the said C. D., is afraid that the said A. B. will do him some bodily injury, and therefore prays that the said A. B. may be required to find sufficient sureties to keep the peace and be of good behaviour towards him, the said C. D.; and the said C. D. also says that he does not make this complaint against nor require such sureties from the said A. B. from any malice or ill-will, but merely for the preservation of his person from injury.

XXX—(*Section 970*)

FORM OF RECOGNIZANCE FOR THE SESSIONS.

Canada,
Province of ,
County of .

Be it remembered that on the day of , in the year A. B. of , (*labourer*), L. M. of , (*grocer*), and N. O. of , (*butcher*), personally came before (*us*) the undersigned, (*two*) justices of the peace for the county of , and severally acknowledged themselves to owe to our Lady the Queen the several sums following, that is to say: the said A. B. the sum of , and the said L. M. and N. O. the sum of , each, of good and lawful money of Canada, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, her heirs and successors, if he, the said A. B., fails in the condition endorsed (*or* hereunder written).

Taken and acknowledged the day and year first above mentioned, at before us.

J. S.
J. T.
J. P.'s (*Name of county.*)

The condition of the within (*or* above) written recognizance is such that if the within bound A. B. (of, &c.), * appears at the next Court of General Sessions of the Peace, (*or other court discharging the functions of the Court of General Sessions*), to be holden in and for the said county of , to do and receive what is then and there enjoined him by the court, and in the meantime * keeps the peace and is of good behaviour towards Her Majesty and her liege people, and specially towards C. D. (of, &c.) for the term of now next ensuing, then the said recognizance to be void, otherwise to stand in full force and virtue.

The words between the asterisks ** to be used only where the principal is required to appear at the sessions or such other court.

YYY—(*Section* 959.)

FORM OF COMMITMENT IN DEFAULT OF SURETIES.

Canada,
Province of ,
County of .

To all or any of the other peace officers in the county of , and to the keeper of the common gaol of the said county, at , in the said county.

Whereas on the day of (*instant*), complaint on oath was made before the undersigned (*or* J. L., Esquire,) a justice of the peace in and for the said county of , by C. D., of , in the said county, (*labourer*), that A. B., of (&c.), on the day of , at aforesaid, did threaten (*&c., follow to the end of complaint, as in form above, in the past tense, then*): And whereas the said A. B. was this day brought and appeared before me, the said justice, (*or* J. L., Esquire, a justice of the peace in and for th said county of), to answer unto the said complaint; and having been required by me to enter into his own recognizance in the sum of , with two sufficient sureties in the sum of each, * as well for his appearance at the next General Sessions of the Peace (*or other court discharging the functions of the Court of General Sessions, or as the case may be*), to be held in and for the said county of , to do what shall be then and there enjoined him by the court, as also in the meantime * to keep the peace and be of good behaviour towards Her Majesty and her liege people, and especially towards the said C. D., has refused and neglected, and still refuses and neglects, to find such sureties: These are, therefore, to command you, and each of you, to take the said A. B., and him safely to convey to the (common gaol) at aforesaid, and there to deliver him to the keeper thereof, together with this precept: And I do hereby co mmand you, the said keeper of the said (common gaol), to receive the said A. B. into your custody in the said (common gaol), there to imprison him until the said next General Sessions of the Peace (*or the next term or sitting of the said court discharging the functions of the Court of General Sessions, or as the case may be*), unless he, in the meantime, finds sufficient sureties as well for his appearance at the said Sessions (*or* court) as in the meantime to keep the peace as aforesaid.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S. [SEAL.]
J. P. (*Name of county*).

The words between the asterisks * * to be used when the recognizance is to be so conditioned.

SUPPLEMENTARY FORMS NOT IN THE ACT.

INFORMATION AGAINST AN ACCESSORY AFTER THE FACT.

Proceed as in (C.) ante, p. 260, and after describing the offence of the principal, state thus :—And that C. S., of, etc., well knowing the said A. B. to have committed the offence aforesaid, afterwards, to wit, on the day of instant, at the of aforesaid, did receive, comfort and assist the said A. B.

THE LIKE WITHOUT THE PRINCIPAL OR WHERE THE PRINCIPAL IS UNKNOWN.

Proceed as in (C.) ante, p. 260, to the statement of the offence, then thus :—That one A. B., of, etc., (or some person or persons whose name or names is or are unknown), on the day of at the of etc., did (*describe the offence of the principal*), and that E. S., of well knowing the said A. B. (or person unknown) to have committed the offence aforesaid, afterwards, to wit, on the day of at the of aforesaid, did receive, comfort and assist the said A. B. (or person unknown).

DEPOSITION OF THE CONSTABLE OF THE SERVICE OF THE SUMMONS.

Canada
Province of
District (*or* County,
United Counties, *or as the case may be*),
of

The deposition of J. N., constable of the of C., in the said (*county,*) taken upon oath before me the undersigned, one of Her Majesty's justices of the peace for the said (*county*) of C., at N., in the same (*county*), this day of 18 , who saith that he served A. B., mentioned in the annexed (*or* within) summons, with a duplicate thereof, on the day of last personally (*or* "by leaving the same with N. O., a grown person, at the said A. B's usual *or* last place of abode at N., in the county of S.").

Before me J. S.

J. N.

DEPOSITIONS OF THE WITNESSES ON THE REMAND DAY.

This will be on the like caption as the form (S) ante, p. 269, but the description of the offence need not be repeated.

The jurat will be as follows:—The above depositions of F. G., etc., were taken and sworn before me at , on the day of 18 , (and the depositions of C. D., and E. F., taken on the day of 18 , (and the depositions of C. H. and L. M. taken on the day of 18 ,) being at the same time severally read over and resworn in the presence and hearing of the before-named prisoner.

J. S.

Where the same justice hears the further evidence on the remand day, there would be no necessity for the former depositions to be re-sworn, and consequently no allusion to it in the jurat.

If on the remand day there is a committal for trial by another justice without any additional evidence, place the following jurat: "The foregoing depositions of C. D. and E. F. taken on, etc., (and the depositions of F. G., etc., taken on, etc.), were severally read over and re-sworn before me at , on the day of 18 , in the presence and hearing of the before-named prisoner.

J. L.

MEMORANDUM TO BE WRITTEN ON DOCUMENTS PRODUCED IN EVIDENCE.

This is the plan (*or as the case may be*) produced to me, the undersigned, (*one*) of Her Majesty's justices of the peace for the (*county*) of , on the examination of A. B., charged with arson, (forgery, etc.), and referred to in the examination of C. D. touching the said charge, taken before me this day of 18 .

J. S.

NOTICE OF RECOGNIZANCE WHEN THERE IS A SURETY FOR A WITNESS.

See Code, s. 779.

Take notice, that you C. D., of etc., are bound in the sum of to appear (*or* for the appearance of L. M., of etc., a minor *or* the wife of J. M., of etc., *as the case may be*) at the next court of general sessions of the peace (*or* Oyer and Terminer and general gaol delivery) in and for the said (*county*) of , and then and there to (prosecute and) give evidence against A. B. for (*stating the offence*), and unless you (he) then appear (appears and prosecutes) and give evidence accordingly, the recognizance entered into by you will be forthwith levied on you.

Dated day of , 18 .

J. S. the justice of the peace for the said (*county*) of , before whom the recognizance was entered into.

ORDER TO BRING UP ACCUSED BEFORE EXPIRATION OF REMAND.

To the keeper of the (*common gaol*) at , in the said (*county*) of
to wit: } Whereas A. B. (hereinafter called the "accused" was on the
} day of , committed (by me) to your custody in the said (*common gaol*) charged for that (*etc., as in the warrant remanding the prisoner*), and by the warrant in that behalf* you were commanded to have him at , on the day of , now next, at o'clock in the forenoon, before such justice or justices of the peace for the said (*county*), as might then be there, to answer further to the said charge, and to be further dealt with according to law.

(*Or shortly, from the asterisk,** "he was remanded to the day of next") unless you should be otherwise ordered in the meantime: and whereas it appears to me, the undersigned, one of Her Majesty's justices of the peace in and for the said (*county*) of , (*or* me the said justice), to be expedient the said accused should be further examined before the expiration of the said remand: These are therefore to order you in Her Majesty's name to bring and have the said accused at (*etc., follow from the asterisk in the preceding form, supra, to the end.*

COMPLAINT OF BAIL FOR A PERSON CHARGED WITH AN INDICTABLE OFFENCE IN ORDER THAT HE MIGHT BE COMMITTED IN DISCHARGE OF THEIR RECOGNIZANCES.

Proceed as in the preceding form to the asterisk altering it to two complaints if there be more than one surety, then thus:* that they, the said C. D. and E. F., were on the day of now last past, severally and respectively bound by recognizance before J. P., Esquire, one of Her Majesty's justices of the peace for the said (*county*) of , in the sum of each, upon condition that one A. B., of etc., should appear at the next term of the Court of Queen's Bench (crown side), for the district of , (or Court of Oyer and Terminer and general gaol delivery, *or* Court of General Sessions of the Peace), to be holden in and for the (*county*) of , and there surrender himself into the custody of the keeper of the (*common gaol*) there, and plead to such indictment as might be found against him by the grand jury for or in respect to the charge of (stating the charge shortly), and take his trial upon the same and not depart the said court without leave; and that these complainants have reason to suspect and believe and do verily suspect and believe, that the said A. B. is about to depart from this part of the country; and therefore they pray of me the said justice that I would issue my warrant of apprehension of the said A. B., in order that he may be surrendered to prison in discharge of them his said bail.

Before me, J. P.

C. D.
E. F.

WARRANT TO APPREHEND THE PERSON CHARGED.

To all or any of the constables and other peace officers in the said district (*or* county, united counties, *or as the case may be*), of , and to C. D. and E. F., severally and respectively.

To wit: } Whereas you the said C. D. and E. F., have this day made complaint to me the undersigned, one of Her Majesty's justices of the peace in and for the said (*county*) of , that you the said C. D. and E. F., were, etc., (*as in the complaint, to the end*): These are therefore to authorize you the said C. D. and E. F., and also to command you the said (*constable or other* peace officer), in Her Majesty's name forthwith to apprehend the said A. B., and to bring him before me or some justice or justices of the peace in and for the said (*county*), to the intent that he may be committed to the (*common gaol*) in and for the said (*county*), until the next Court of Oyer and Terminer and general gaol delivery (*or* Court of General Quarter Sessions of the Peace), to be holden in and for the said (*county*) of *or, etc., as the case may be*), unless he find new and sufficient sureties to become bound for him in such recognizance as aforesaid.

Given under my hand and seal, this day of , in the year of our Lord , at , in the (*county*) aforesaid.

J. S. [L.S.]

COMMITMENT OF THE PERSON CHARGED ON SURRENDER OF HIS BAIL AFTER APPREHENSION UNDER A WARRANT.

To all or any of the constables, or other peace officers in the district (*or* county, united counties, *or as the case may be*) of , and to the keeper of the common gaol of the district (*or* county, united counties, *or, as the case may be*) at , in the said district (*or* county, etc.), of :

To wit: } Whereas on the day of instant, complaint was made to me the undersigned (*or* J. S.) one of Her Majesty's justices of the peace, in and for the said (*county*) of , by C. D. and E. F., of, etc., that (*as in the complaint, to the end*), I (*or* the said justice) thereupon issued my warrant authorizing the said C. D. and E. F., and also commanding the said constables of , and all other peace officers in the said (*county*) of , in Her Majesty's name forthwith to apprehend the said A. B., and to bring him (*follow to end of warrant*, preceding form); and whereas the said A. B., hath been apprehended under and by virtue of the said warrant, and being now brought before me the said justice (*or* me the undersigned, one, etc.), and surrendered by the said C. D. and E. F., his said sureties, in discharge of their said recognizances, I have required the said A. B., to find new and sufficient sureties to become bound for him in such recognizance as aforesaid, but the said A. B. hath now refused so to do; These are therefore to command you the said constables (*or other peace officers*) in Her Majesty's name, forthwith to take and safely to convey

the said A. B., to the said (*common gaol*) at , in the said (*county*) and there deliver him to the keeper thereof, together with this precept; and I hereby command you the said keeper to receive the said A. B. into your custody in the said (*common goal*), and him there safely to keep until the next Court of Oyer and Terminer and general gaol delivery (*or* Court of General Sessions of the Peace), to be holden in and for the said (*county*) of , unless in the meantime the said A. B. shall find new and sufficient sureties to become bound for him in such recognizance as aforesaid.

Given, etc., (*as in the preceding form*).

MINUTES OF PROCEEDINGS AT THE HEARING WITH ADJUDICATION.

A. against B.

day of , 18 , at before

The defendant appeared on a (*warrant or summons*), granted by charging him with assaulting and beating at L., on the 3rd instant, one C. Defendant, on being asked what he has to say, pleads not guilty, *or* complainant being sworn says:

E., of , being sworn, says, *or* complainant does not appear and defendant attends with his witnesses.

Adjudication on dismissal. Dismissed with costs, namely, to be paid (forthwith) or levied by distress, or in default, imprisonment for fourteen days.

SUMMARY OF THE CRIMINAL LAW OF CANADA.

ABANDONING CHILD.

(*See* CHILD.)

ABDUCTION.

This offence is now governed by ss. 281-282 and 283 of the Code.

The statute applies whether the prisoner's intention is to marry the woman himself or to assist any other person to do so. It is necessary under section 282 (*a*), that the woman be possessed of property.

Where the prisoner is charged with abduction "from motives of lucre," it would be necessary to establish the motive, and to do this, some proof of knowledge or belief on his part that the woman had an interest in property, would be necessary. R. v. Kaylor, 26 L. C. J. 36.

Verbal evidence that the woman has an interest in property generally is sufficient to sustain an indictment which sets out the particular interest which the woman possesses. But an indictment under (*b*) may be sustained without evidence of the prisoner's knowledge that the woman was an heiress, for the offence there is abduction with intent to marry or carnally know. *Ib.*

Under (*b*) the woman must be taken out of the possession of her father, etc. This involves a *taking* and also a *possession* by the father.

The expression "taking out of the possession," means taking the girl to some place where the person in whose charge she is cannot exercise control over her for some purpose inconsistent with the object of such control. A taking for a time only may amount to abduction. If the consent of the person from whose possession the girl is taken is obtained by fraud, the taking is

deemed to be against the will of such person. R. v. Prince, L. R. 2 C. C. R. 154.

If the girl leaves without any inducement on the part of the defendant, and then goes to him, he is not within the statute. R. v. Olifier, 10 Cox, 402.

There must be a taking away or allurement out of the possession of the father, and merely cohabiting with the girl after she has left does not constitute the offence. R. v. Miller, 13 Cox, 179.

The offence is not within the statute if it does not appear that the prisoner knew or had reason to believe that the girl was under the lawful care or charge of her father or mother, or any other person. R. v. Hibbert, L. R. 1 C. C. R. 184.

But a mere absence for a temporary purpose and with intention of returning, does not interrupt the possession of the father. R. v. Mycock, 12 Cox, 28, following R. v. Olifier, 10 Cox, 402.

Under (*b*) it is immaterial whether there be any corrupt motive, whether the girl consents, and whether the defendant be a male or female. R. v. Hawley, 1 F. & F. 648.

But it is not necessary to shew a trespass or anything of that nature in the taking, other than the act of taking. R. v. Fraser, 8 Cox, 436.

And if the parents have encouraged the girl in a low course of life, the case does not come within the statute. R. v. Primet, 1 F. & F. 50

The 283rd section of the Code relates to the abduction of a girl under the age of sixteen years.

An informatiom under this section should show that the unmarried girl is under sixteen years of age, and is taken out of the possession and against the will of the father. Whittier v. Diblee, 2 Pugsley, 243.

The girl must be in the possession of some person having the lawful care or charge of her, but if such exist, the consent of the girl to go away, will not be a defence for the prisoner. A guardian is a person having the lawful care, etc., within the meaning of the statute, and it is not necessary to prove a strict guardianship. If the girl leave her guardian's house for a particular purpose with

his sanction, and with the intention of returning, she does not cease to be in his possession within the meaning of the statute. There must be proof of the age of the girl, but the girl herself and her father or mother are competent to prove this. A certificate is not necessary, at all events where the prisoner undertakes to establish that the girl was not baptized. R. v. Mondelet, 21 L. C. J. 154.

When a prisoner is charged with abducting a girl under sixteen, it is a sufficient defence if, at the moment of taking her out of lawful custody he had reasonable cause to believe that she was of the age of eighteen, although he did not inquire of her age until after he had taken her out of custody, but before the abduction was complete. R. v. Packer, 16 Cox, 57.

But it is no defence that the defendant did not know her to be under sixteen, or might suppose from her appearance that she was older, or even that he believed that he knew she was over that age. R. v. Prince, L. R. 2 C. C. R. 154.

On a trial for taking an unmarried girl under the age of sixteen out of the possession of her guardian, evidence of cruel treatment of the girl by the guardian is inadmissible. Where a child was taken from motives of benevolence from a barn where she had sought refuge, the barn not being on the property or premises of the guardian, and was then placed by the persons who had come to her relief in the charge of defendant, as secretary of a society for the protection of women and children, it was held that the secretary was not guilty of taking out of the possession of the guardian. R. v. Hollis, 8 L. N. 229.

The prisoner was convicted for unlawfully taking an unmarried girl under the age of sixteen years out of the possession and against the will of her father. On the same day he was again tried and convicted under the R. S. C. c. 157, s. 3, Code, s. 181, for the seduction of the said girl, being previously of chaste character and between the ages of fourteen and sixteen years. It was held that the offences were several and distinct, and that a conviction on the first indictment did not preclude a conviction on the second one. R. v. Smith, 19 O. R. 714.

ABORTION.

This offence is now governed by ss. 271, 272, 273 and 274 of the Code. Section 271 is new and makes it an indictable offence to cause the death of any child which has not become a human being in such a manner that he would have been guilty of murder if such child had been born.

If A. procures poison and delivers it to B. both intending that B. should take it for the purpose of procuring abortion, and B. afterwards take it with that intent in the absence of A., the latter may be convicted of causing it to be taken. R. v. Wilson, 1 Dears & B. 127.

The prisoner had procured certain drugs and gave them to his wife with intent that she should take them in order to procure abortion. She took them in his absence and died from the effects. The court held that though he was an accessory before the fact, he might be convicted of manslaughter. R. v. Taylor, 7 Cox, 253. No difficulty would now arise under ss. 61 and 62 of the Code; see *post*, Accessories.

A "noxious thing" within these sections of the statute means a thing that will produce the effect mentioned in the statute, and although it is not shown what the drug administered was, yet if it produces a miscarriage, that will be sufficient evidence of its being a "noxious thing" within the statute. R. v. Hollis, 12 Cox, 463.

A thing may be noxious within the statute if, when taken in a large quantity it proves injurious, although when taken in a small quantity it is beneficial.

Supplying a noxious thing to a woman with intent that it be used to procure abortion is an indictable offence although the woman for whom it was intended was not pregnant. R. v. Titley, 14 Cox, 502.

ACCESSORIES.

Every one is a party to and guilty of an offence who—

(*a*) Actually commits it; or

(*b*) Does or omits an act for the purpose of aiding any person to commit the offence; or

(*c*) Abets any person in commission of the offence; or

(*d*) Counsels or procures any person to commit the offence.

If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was, or ought to have been known to be a probable consequence of the prosecution of such common purpose. Code, s. 61.

Section 62 of the Code provides that every one who counsels or procures another to be a party to an offence of which that other is afterwards guilty is a party to that offence, although it may be committed in a way different from that which was counselled or suggested.

Every one who counsels or procures another to be a party to an offence is a party to every offence which that other commits in consequence of such counselling or procuring, and which the person counselling or procuring knew, or ought to have known, to be likely to be committed in consequence of such counselling or procuring.

An accessory after the fact to an offence is one who receives, comforts or assists any one who has been a party to such offence in order to enable him to escape, knowing him to have been a party thereto.

No married person whose husband or wife has been a party to an offence shall become an accessory after the fact thereto by receiving, comforting or assisting the other of them, and no married woman whose husband has been a party to an offence shall become an accessory after the fact thereto, by receiving, comforting or assisting in his presence and by his authority any other person who has been a party to such offence in order to enable her husband or such other person to escape. Code, s. 63.

See, as to accessories after the fact, sections 67, 235, 531 and 532.

Under section 842 of the Code, in the case of any offence punishable on summary conviction, aiders and abettors may be proceeded against either in the territorial division or place where the principal offender may be convicted, or in that in which the offence of aiding and abetting was committed; and under section 627 every accessory after the fact may be indicted, whether the principal offender has or has not been indicted or convicted, or is or is not amenable to justice.

Sections 61 and 62 of the Code make those guilty of a substantive offence, who would heretofore have been accessories before the fact. And the fact of the presence or absence of the party at the time of the commission of the offence seems to be immaterial. A person who counsels or procures the doing of a criminal act incurs the same guilt as the one who actually commits it.

There seems now no distinction between principals in the first and second degree or accessories before the fact.

The general definition of a principal in the first degree is one who is the actor or actual perpetrator of the crime. Principals in the second degree are those who were present aiding and abetting the commission of the crime. To constitute an aider or abettor the party must, under the former law, have been actually present, aiding or in some way assisting in the commission of the offence or constructively present for the same purpose, that is in such a convenient situation as readily to come to the assistance of the others, and with the intention of doing so should occasion require. R. v. Curtley, 27 Q. B. (Ont.) 617. This presence seems no longer necessary.

On the general principle that a person is liable for what is done under his presumed authority, see R. v. King, 20 C. P. (Ont.) 248, where there is a combination to effect some unlawful purpose each person is liable for every act of any of the others in prosecution of the common design. *Ib.*, and see R. v. Slavin, 17 C. P. (Ont.) 205. A criminal act, committed by one person in prosecution of a common unlawful purpose, is the act of all, but where the original purpose is lawful, the person committing the act will alone be liable. A person authorizing the commission of a crime is

liable for the act of his agent in the execution of his authority. The agent is also liable for the unlawful act, although he may have the express or implied authority of his principal for its commission. See R. v. Brewster, 8 C. P. (Ont.) 208.

Formerly it was only in felonies that there could be accessories, for in misdemeanours all were principals. See R. v. Tisdale, 20 Q. B. (Ont.) 273; R. v. Campbell, 18 Q. B. (Ont.) 417; R. v. Benjamin, 4 C. P. (Ont.) 189; and those, therefore, who would be accessories in felonies were principals in misdemeanours. But the Code, s. 535, now abolishes the distinction between felony and misdemeanour. And as we have already seen, ss. 61 and 62 make every one who formerly would have been accessory before the fact a principal offender. See R. v. Hughes, 8 Cox, 278.

Ordinarily there could be no accessories before the fact in manslaughter, for the offence is sudden and unpremeditated, but there may be accessories after the fact.

Knowledge that a person intends to commit a crime and conduct connected with, and influenced by, such knowledge, is not enough to make the person, who possesses such knowledge or so conducts himself, a party to and guilty of such crime, unless he does something to encourage its commission actively. Thus, B. and C. agree to fight a prize fight for a sum of money. A., knowing their intention, acts as stakeholder. B. and C. fight, and C. is killed. A. is not present at the fight, and has no concern with it, except being stakeholder, and he cannot be found guilty of the manslaughter of C. R. v. Taylor, L. R. 2 C. C. R. 147. In treason, however, the case is different. See Code, s. 67 (*b*).

If a procurer countermands the execution of the crime before it is executed, he ceases to be liable, if the principal had notice of the countermand before the execution of the crime, but not otherwise.

Every one is an accessory after the fact to an offence, who knowing the same to have been committed by another, receives, comforts, or assists him, in order to enable him to escape from punishment or rescues him from an arrest for the offence, or having him in custody for the same intentionally and voluntarily suffers him to escape, or opposes his apprehension. See Code, s. 63.

A person charged as accessory to murder may be convicted as accessory to manslaughter, if the principal is acquitted of the murder and found guilty of manslaughter. Where the principals commit a joint crime, the person harbouring them is guilty of a separate offence for each person whom he harbours. R. v. Richards, L. R. 2 Q. B. D. 311.

In relation to the offences mentioned in ss. 376, 377 and 378 of the Code, the person by whom such thing is actually done, or who connives at the doing thereof, is guilty of the offence, and not any other person. *Ib.* s. 379.

ACCIDENTS ON SHIPS.

The Act respecting the safety of ships and the prevention of accidents on board thereof (R. S. C. c. 77), makes it a misdemeanour to send an unseaworthy ship to sea (*Ib.* s. 6), and disorderly persons attempting to board a ship, or refusing to leave, or molesting passengers, or refusing to pay fare, are liable to penalties, (*Ib.* s. 10); so penalties are imposed for sending or attempting to send dangerous goods without notifying their character (*Ib.* s. 14), and by section 20, every penalty imposed by the Act may be recovered with costs before any two justices of the peace.

This Act was amended by the 54 & 55 V. c. 38.

ACCOMPLICE.

A justice has no power to make a promise of pardon, and it is his duty to commit an accomplice for trial, notwithstanding it is intended that he should give evidence for the prosecution.

Where the evidence would be too weak to justify a commitment, independent of the testimony of the accomplice, the proper course seems to be to take the deposition of the accomplice in the usual way, cautioning him at the same time that he is not bound to say anything which may criminate himself. In this case the accomplice would be bound over as a witness, and the circumstances explained to the judge before the indictment against the prisoner is presented to the grand jury. Stone's Jus. Man. 48.

ACTIONS AGAINST PERSONS ADMINISTERING THE CRIMINAL LAW.

Every action and prosecution against any person for anything purporting to be done in pursuance of any Act of the Parliament of Canada relating to criminal law, shall, unless otherwise provided, be laid and tried in the district, county or other judicial division, where the act was committed, and not elsewhere, and shall not be commenced except within six months next after the act committed. R. S. C. c. 185, s. 1. Code, s. 975.

Notice in writing of such action and of the cause thereof, shall be given to the defendant one month at least before the commencement of the action. R. S. C. c. 185, s. 2. Code, s. 976.

In any such action the defendant may plead the general issue, and give the provisions of this title and the special matter in evidence at any trial had thereupon. R. S. C. c. 185, s. 3. Code, s. 977.

No plaintiff shall recover in any such action if tender of sufficient amends is made before such action brought, or if a sufficient sum of money is paid into court by or on behalf of the defendant after such action brought. R. S. C. c. 185, s. 4. Code, s. 978.

If such action is commenced after the time hereby limited for bringing the same, or is brought or the venue laid in any other place than as aforesaid, a verdict shall be found or judgment shall be given for the defendant; and thereupon or if the plaintiff becomes non-suit, or discontinues any such action after issue joined, or if upon demurrer or otherwise judgment is given against the plaintiff, the defendant shall, in the discretion of the court, recover his full costs as between solicitor and client, and shall have the like remedy for the same as any defendant has by law in other cases; and although a verdict or judgment is given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge, before whom the trial is had, certifies his approval of the action. R. S. C. c. 185, s. 5. Code, s. 979.

Nothing herein shall prevent the effect of any Act in force in any province of Canada, for the protection of justices of the peace

or other officers from vexatious actions for things purporting to be done in the performance of their duty. R. S. C. c. 185, s. 6. Code, s. 980.

In Ontario, the R. S. c. 73, protects justices of the peace and others from vexatious actions.

Section 1 of the Act provides that in case an action is brought against any justice of the peace for any act done by him in the execution of his duty as such justice, with respect to any matter within his jurisdiction, it shall be expressly alleged in the statement of claim that the act was done maliciously and without reasonable and probable cause.

When the justice has jurisdiction over the subject matter of complaint and over the person of the party, an action of trespass will not lie against the justice unless there is malice or want of reasonable and probable cause. Hallett v. Wilmot, 40 Q. B. (Ont.) 263; Birch v. Perkins, 2 Pugs., 327; but if the matter was one in which the magistrate had no jurisdiction at all, then he is a trespasser. West v. Smallwood, 3 M. & W. 418.

Whenever there is an arrest, and it can be said there was no jurisdiction, trespass is the proper form of action. See Hunt v. McArthur, 24 Q. B. (Ont.) 254. Whenever it can be said that there was jurisdiction, the remedy is an action on the case as for a tort, and it must be expressly alleged and proved that the act was done maliciously and without reasonable or probable cause. Caudle v. Seymour, 1 Q. B. 889; Appleton v. Lepper, 20 C. P. (Ont.) 138; Crawford v. Beattie, 39 Q. B. (Ont.) 13; Stoness v. Lake, 40 Q. B. (Ont.) 326.

When a magistrate has jurisdiction he never can be made liable in an action of trespass for an irregularity in procedure, mistake of law or erroneous conclusion from facts. Mills v. Collett, 6 Bing., 85; Sprung v. Anderson, 23 C. P. (Ont.) 152; Col. Bk. of A. v. Willan, L. R. 5 P. C. App. 417. See also Dobbyn v. Decow, 25 C. P. (Ont.) 18; Gardner v. Burwell, Taylor, 189.

When a justice acts within his jurisdiction and without malice, he is free from damages. Cartier v. Burland, 2 Revue Critique, 475.

After a conviction by a magistrate is quashed, an action on the case will not lie against him unless the acts complained of be proved to have been committed by him without any reasonable or probable cause and maliciously, and the question of malice must be left to the jury. Burney v. Gorham, 1 C. P. (Ont.) 358.

One A. went before the defendants, two justices, and swore that from circumstances mentioned he was afraid that the plaintiff would destroy his property, and he, therefore, prayed that he might be bound over to keep the peace. Defendants thereupon, on plaintiff's refusal to find sureties, committed him to gaol. It was held that this Act clearly applied, and that, therefore only a special action on the case could be maintained. Fullerton v. Switzer, 13 Q. B. (Ont.) 575.

The justice is not deprived of the protection of the Act by some irregularity in drawing up the conviction, such as signing the conviction, leaving blanks for the amount of costs. Bott v. Ackroyd, 28 L. J. M. C. 207; and when, supposing the facts alleged to be true, the magistrate has jurisdiction, his liability to be sued or his exemption from such liability on the ground of jurisdiction cannot be affected by the truth or falsehood of those facts, or by the sufficiency or insufficiency of the evidence adduced for the purpose of establishing them. Cave v. Mountain, 1 M. & Gr. 257.

The falsity of the charge in an information cannot give a cause of action against a magistrate who acts upon the assumption and belief of its truth. Where an information contained every material averment necessary to give a magistrate jurisdiction to make an order upon the plaintiff to find sureties to keep the peace, but contained also additional matter which it was contended so qualified and explained these averments as to render them nugatory; it was held that this was a judicial question for the magistrate to decide, and therefore that in issuing his warrant for the appearance of the accused, he was not acting without jurisdiction, even although a superior court might quash his order to find sureties. Sprung v. Anderson, 23 C. P. (Ont.) 152.

An action of trespass cannot be maintained against an officer, who executes a writ issued upon a judgment, rendered by an

inferior court in a matter over which they had jurisdiction. Goudie v. Langlois, Stuart, 142; Ovens v. Taylor, 19 C. P. (Ont.) 49. See Code. ss. 16, 17, and 18. The court would not in such case be responsible, and where the officer executing the writ of an inferior court is sought to be made liable, the want of jurisdiction in the court from which it issued must be apparent on the face of the writ itself, and unless it be so, the officer cannot be considered as a trespasser. (Goudie v. Langois, *supra.*) See Code, s. 19.

Section 2 of the Act provides that for any act done by a justice of the peace in a matter in which by law he has not jurisdiction, or in which he has exceeded his jurisdiction, or for any act done under any conviction, or order made or warrant issued by such justice, in any such matter, any person injured thereby may maintain an action against such justice in the same form and in the same case as he might have done before the passing of the Act, without making any allegation in his statement of claim that the act complained of was done maliciously and without reasonable and probable cause.

This section must be read in connection with the first section of the Act, and therefore where, in the course of a matter transacted before a justice, there has been an excess of jurisdiction, the second section does not apply, unless the action in which it is sought to be applied is brought for an act done in respect of that part of the matter, or some part of it which was beyond the jurisdiction. Barton v. Bricknell, 13 Q. B., 393.

Where a conviction contained no adjudication as to costs, but the justices issued a warrant of distress reciting the conviction as adjudicating costs, and the party's goods were seized as well for the costs as the penalty, this was holden to be an excess of jurisdiction, within the meaning of the above section, and that trespass lay for it. Leary v. Patrick, 19 L. J. M. C. 211. The meaning of the words "exceeded his jurisdiction," in the above section, means assuming to do something which the statute, under which the justice is proceeding, could by no possibility justify. Ratt v. Parkinson, 20 L. J. M. C. 208. And they apply only to cases where the act, in respect of which the action is brought against the justices is itself an excess of jurisdiction. Barton v. Bricknell,

13 Q. B. 393; Somerville v. Mirehouse, 1 B. & S. 652. So if an order be good in part and bad in part, a justice may issue a warrant of distress to enforce so much of it as is good, without subjecting himself to an action. R. v. Green, 20 L. J. M. C. 168.

When magistrates commit a person upon a general charge of an indictable offence given upon oath, they will not be liable to an action of trespass, although the facts sworn to, in order to substantiate that charge, may not, in point of law, support it. Gardner v. Burwell, Taylor, 189.

If a magistrate cause a party to be wrongfully imprisoned without any reasonable cause until he gives his note to obtain a discharge, the magistrate is liable in trespass. Brennan v. Hatelie, 6 O. S. 308.

A magistrate sued in trespass for an alleged illegal proceeding under the 4 & 5 V. c. 26, may give in evidence a tender of amends, under the plea of the general issue. Moore v. Holditch, 7 Q. B. (Ont.) 207.

A justice of the peace who issues a warrant without jurisdiction, as on an insufficient information, is liable to an action of trespass for assault and false imprisonment, and the question of reasonable and probable cause cannot arise in such a case as this but only in a case where the justice has jurisdiction. Whittier v. Diblee, 2 Pugsley, 243.

In an action for malicious prosecution, it appeared that the defendant was a justice of the peace, and as such acquired his knowledge of the circumstances on which he preferred the charge against the defendant. The court, however, held that this was clearly no ground for requiring that express malice should be proved against him. Orr v. Spooner, 19 Q. B. (Ont.) 601.

Defendant, a justice, issued a warrant against the plaintiff upon a complaint for detaining the clothes of one K. The plaintiff on being told by the constable that he had the warrant, went alone to defendant, heard the evidence, was allowed to go away without giving bail, and returned the next day when he was discharged. It was held that no imprisonment was proved, and that defendant, having jurisdiction over the subject matter of the complaint, was

not liable in trespass, even if the information were insufficient in point of form. Thorpe v. Oliver, 20 Q. B. (Ont.) 264.

A magistrate has no jurisdiction to administer an oath and take examinations within the limits of a foreign country, and a commitment founded on such proceedings is void and affords no justification in an action of trespass against the magistrate. Nary v. Owen, Berton, N. B. Reps. 377.

It was laid down in a suit before a justice for wages, in the Vice-Admiralty Court of Quebec, that although justices of the peace exercising summary jurisdiction are the sole judges of the weight of the evidence given before them, and no other court will examine whether they have formed the right conclusion from it, yet other courts may and ought to examine whether the premises stated by the justices are such as will warrant the conclusion in point of law. *The Scotia*, 1 Stuart, V. A. Reps. 160.

Justices cannot give themselves jurisdiction by finding that as a fact which is not a fact, and their warrant in such case will be no protection to the officer who acts under it. *The Haidee*, 2 Stuart, V. A. Reps. 25; 10 L. C. R. 101.

An action for false imprisonment was brought against the informant, the bailiff making the arrest, and the two committing justices, and judgment was rendered against the four, jointly, but it was held that the two committing magistrates were alone liable in damages, and the judgment against the other two was set aside. Bissonette v. Bornais, 2 L. C. L. J. 18.

Omitting to state the conviction of a defendant, in his warrant of commitment, will not subject a justice of the peace to an action for false imprisonment, provided the actual conviction is proved upon his defence. Whelan v. Stevens, Taylor, 245.

The 4th section prevents an action being brought for anything done under a conviction, so long as the conviction remains quashed and in force. Arscott v. Lilley, 11 O. R. 285.

It makes no matter whether the magistrate acted within or without his jurisdiction, while the conviction stands, an action of trespass will not lie against the magistrate, for that statute limits the form of action to case so long as the magistrate had jurisdiction

over the matter adjudicated upon. Haacke v. Adamson, 14 C. P. (Ont.) 201. Sprung v. Anderson, 23 C. P. (Ont.) 152.

On the return to a writ of *habeas corpus*, the judge has nothing before him but the commitment and a discharge granted on a *habeas corpus* is not equivalent to quashing the conviction on which the commitment was drawn up. Hunter v. Gilkison, 7 O. R. 735.

Where an appeal was brought from a conviction imposing imprisonment with hard labour, which the magistrate had no power to award, and the sessions amended the record by striking out "hard labour," the court held that such amendment was not a quashing of the conviction, and therefore trespass would not lie against the justice. McLellan v. McKinnon, 1 O. R. 219.

It makes no difference that there is no appeal from such conviction. Basebe v. Matthews, 36 L. J. C. P. 296.

A conviction not set aside protects a magistrate against an action of trespass. Gates v. Devenish, 6 Q. B. (Ont.) 260.

A conviction bad on the face of it, though not quashed, is no defence to an action of trespass. Briggs v. Spilsburg, Taylor, 245.

Where a conviction exists *de facto*, though it is unsustainable, it is necessary that the same be quashed before an action of trespass or trover is brought against the magistrate for the property disposed of by the conviction: Jones v. Holden, 13 C. L. J. N. S. 19; Graham v. McArthur, 25 Q. B. (Ont.) 478.

But an order or conviction not under seal need not be quashed before action, McDonald v. Stuckey, 31 Q. B. (Ont.) 577; following Haacke v. Adamson, 14 C. P. (Ont.) 201; see further Huard v. Dunn, 1 Revue Critique, 247.

A conviction made by one magistrate, in a matter in which jurisdiction was given to two only, must be quashed though wholly void. Graham v. McArthur, 25 Q. B. (Ont.) 478.

Under the R. S. O. c. 35, s. 7, the adjudication of forfeiture of liquor and the written order for its destruction are two different things. The former is the judicial adjudication upon the complaint, and like a conviction, must be under the hands and seals of the justices by whom it is made. The adjudication of forfeiture must

exist and be proved before any valid order for destruction can be given. The latter need not be quashed before action, as it does not come within the terms of the R. S. O. c. 73, s. 4. It stands on the same ground as a warrant of distress or commitment, which need not be quashed if the conviction is invalid or is duly quashed before action. Bond v. Conmee, 16 A. R. 398; 15 O. R. 716. Affirmed on appeal to Supreme Court. Cassels Dig. (1893), p. 511.

But this section only protects the magistrate in acts which are justified by the conviction. If the conviction does not justify what has been done under it, neither the conviction nor the section in question will avail the magistrate. Arscott v. Lilley, 14 A. R. 283.

It is only necessary to quash a conviction when its production would justify the act done. Therefore it is not necessary to quash the conviction before bringing an action against the magistrate who backs a warrant of commitment in a county other than that in which the conviction took place, for this cannot be "anything done under the conviction." Jones v. Grace, 17 O. R. 681.

The 6th section of the Act provides for an application to the court for an order *nisi*, requiring a justice to do any act relating to the duties of his office.

Under this section, if a justice refuse to do any act, either of the Superior Courts of common law may order him to do it. Although the court will thus interfere in cases where they think that the justice ought to do the act, yet if they think that the justice has acted rightly in refusing to do it, they will not compel him to do it, R. v. Hartley, 31 L. J. M. C. 232; R. v. Deverell, 3 E. & B. 372; and the court will not grant a rule merely to set the justices in motion. R. v. Kesteren, 13 L. J. M. C. 78. The main object of the section is to protect the justice and not the parties from an action, R. v. Cotton, 15 A. & E. 574; and it is not to settle points of jurisdiction generally, except where the ministerial act depends on it. R. v. Collins, 21 L. J. M. C. 73; R. v. Dayman, 7 E. & B. 328; R. v. Brown, 13 Q. B. 654.

As such a rule is a substitute for a *mandamus*, the court will not grant it if the proper remedy was by appeal to the quarter sessions. R. v. Oxfordshire, 18 L. J. M. C. 222.

Where a magistrate has *bona fide* exercised his discretion in refusing to do any act relating to the duties of his office, such as to grant a summons for an indictable offence, the court has no jurisdiction to compel the magistrate to review his decision or to order him to exercise his discretion in any particular way. The statute only extends to cases where the magistrate does not consider the propriety of doing or not doing the act in question. *Ex parte* Lewis, 16 Cox, 449.

Where the magistrate has heard and adjudicated, the section does not apply. R. v. Dayman, 7 E. & B. 328.

So there must be a refusal to adjudicate before the act can be invoked. R. v. Paynter, 26 L. J. M. C. 102; and this section does not apply at all where justices have acted, though perhaps erroneously. *Re* Clee, 21 L. J. M. C. 112; R. v. Blanshard, 18 L. J. M. C. 110. Under the section, the unsuccessful party pays the costs. R. v. Ingham, 17 Q. B. 884. But the rule should ask for the costs. Leamington v. Moultrie, 7 D. &. L. 311. See also *Re* Delaney v. MacNab, 21 C. P. (Ont.) 563.

Section 12, of the Act provides that in case any action is brought, where by this Act it is enacted that no such action shall be brought under the particular circumstances, a judge of the court in which the action is pending shall, upon application of the defendant, and upon an affidavit of facts, set aside the proceedings in such action, with or without costs, as to him seems meet.

In an action against a justice of the peace for false imprisonment and for acting in his office maliciously and without reasonable cause, an application was made before statement of claim to set aside the proceedings under this 12th section 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 had no conviction to support it, and the court held that the case was not within this section. Webb v. Spears, 13 C. L. T. 141.

A gold watch having been taken upon a search-warrant from a person who absconded, the plaintiff claimed title to it, and brought

replevin therefor against a city police magistrate who applied to stay proceedings under this section. It was held that replevin was not within the Act, and the application was dismissed. Mason v. Gurnet, 2 P. R. (Ont.) 389.

Section 13, provides that no action shall be brought against any justice of the peace for anything done by him in the execution of his office, unless the same is commenced within six months next after the act complained of was committed.

The day on which the act was done is not to be included in these six months, and therefore where a person committed by a justice was discharged out of custody on the 14th December, and he commenced his action on the 14th of June, it was holden that the action was commenced in time. Hardy v. Ryle, 9 B. & C. 603.

Where the cause of action is a continued one by imprisonment, the action may be brought within six calendar months after the last day of imprisonment. *Ib.* Massey v. Johnson, 12 East, 67, provided that it be within six months after the service of notice of action. Watson v. Fournier, 14 East. 491.

There may be a series of acts connected together, and yet each giving rise to a cause of action. Collins v. Rose, 5 M. & W. 194.

The word "month" in this section means a calendar month. R. S. O. c. 1, s. 8, s-s. 15.

The 14th section of the Act, prevents the bringing of an action against a justice, until one month at least after a notice in writing of the intended action has been served upon him.

It would appear that the words, "one month at least," mean a clear month's notice, exclusive of the first and last days, or the day of giving notice and suing out the writ. Dempsey v. Dougherty, 7 Q. B. (Ont.) 313; Young v. Higgon, 9 L. J. M. C. 29; R. v. Shropshire, 8 A. & E. 173.

Where the notice was served on the 28th of March, and the writ sued out on the 29th of April, this was held sufficient as being at least one month's notice. McIntosh v. Vansteenburgh, 8 Q. B. (Ont.) 248.

A notice of action for false imprisonment was served on defendant, a justice of the peace, on the 19th of March, and a writ

issued on 17th April. The plaintiff took out a rule to discontinue that suit and got an appointment to tax the costs on the 9th July. On the 7th of July a second notice of action was served on defendant, and a writ issued on Monday, the 9th of August. It was held that if the second notice was bad, the plaintiff could avail himself of the first notice, notwithstanding the discontinuance of the suit commenced thereon, the object of the notice being to enable the party to tender amends, and the discontinuance of the first writ or giving the second notice in no way prevented this. It was also held that though the last day of the month's notice expired on Sunday, the defendant had not the whole of the following day to tender amends, and, therefore, the action was not commenced too soon. Hatch v. Taylor, 1 Pugs. 39.

Where a justice acts either wholly without jurisdiction, or entirely in excess of his jurisdiction, the notice of action need not contain an allegation of malice. *Ib.*

The effect of this section is to protect persons acting illegally, but in the supposed pursuance and with a *bona fide* intention of discharging a public duty. If the officer in the supposed discharge of duty had done nothing illegal he would not need the protection of any statute. See Selmes v. Judge, L. R. 6 Q. B. 724; McDougall v. Peterson, 40 Q. B. (Ont.) 98. When what is complained of is the negligent omission to do what the defendant was called upon to do in the discharge of the duty of his office, then no notice of action would be required; but where the party neglects to do an act, and in that way carrying out the law according to his erroneous idea of his duty, then he is entitled to notice of action. McDougall v. Peterson, *supra*, 101; Moran v. Palmer, 13 C. P. (Ont.) 528; Harrison v. Brega, 20 Q. B. (Ont.) 324; Harrold v. Corporation Simcoe, 16 C. P. (Ont.) 43.

A justice of the peace is entitled to notice of action whenever the act which is complained of is done by him in the honest belief that he was acting in the execution of his duty as a magistrate in the premises. Sprung v. Anderson, 23 C. P. (Ont.) 159; Friel v. Ferguson, 15 C. P. (Ont.) 584. See further, Pacaud v. Quesnel, 10 L. C. J. 207; Bettersworth v. Hough, 10 L. C. J. 184; Murphy v.

Ellis, 2 Hannay, 345; Condell v. Price, 1 Hannay, 333; Pickett v. Perkins, 1 Hannay, 131.

In an action for wrongful arrest, though the conviction made by defendant is void, he is entitled to notice of action if he was acting in his official capacity as a magistrate and had jurisdiction over the plaintiff and the subject matter. Haacke v. Adamson, 14 C. P. (Ont.) 201.

If it be doubtful whether the defendant was acting in the execution of his duty, it should be left to the jury to say whether they believed he was acting as a magistrate or not, and if they find in his favour on that point, notice must be proved. Carswell v. Huffman, 1 Q. B. (Ont.) 381.

In Ontario, proceedings under the Master and Servant's Act (R. S. O. c. 139), must be taken within one month after the engagement has ceased. A magistrate having entertained a case under the Act, notwithstanding more than a month had elapsed since the termination of the engagement, and although he was told that he had no jurisdiction and was shown a professional opinion to that effect and referred to the statute, the court held in an action against the magistrate that the jury were warranted in finding that he did not *bona fide* believe that he was acting in the execution of his duty in a matter within his jurisdiction, and that he was, therefore, not entitled to notice of action. Cummins v. Moore, 37 Q. B. (Ont.) 150.

Defendant, a justice of the peace, commenced a trial, but being required as a witness in the cause, another justice took up the trial during the examination, after which the defendant resumed it, and during the latter stage of the trial committed an assault on the plaintiff. It was held that, though the defendant, when he committed the assault, was acting without jurisdiction, having no right to resume the trial under the R. S. N. B. c. 137, s. 28, still, if he had reasonable grounds to believe that he had jurisdiction to do so, he was entitled to notice of action, and that this question should have been left to the jury. Sumner v. McMonagle, Stephen's Dig., N. B. 10.

Where the plaintiff's evidence shows that the defendant sued in trespass was acting *bona fide*, as a justice of the peace, and the

jury so find, the plaintiff must prove notice of action, and this though defendant has pleaded only the general issue without adding "by Statute" in the margin. Marsh v. Boulton, 4 Q. B. (Ont.) 354.

A magistrate is entitled to notice though he has acted without jurisdiction. Where it was clear that defendant had acted as a justice and there was no evidence of malice, except the want of jurisdiction, it was held not necessary to entitle him to notice to leave it to the jury to say whether he had acted in good faith. Bross v. Huber, 18 Q. B. (Ont.) 282.

Where a magistrate acts in direct contravention of the statute in issuing a warrant, without the proper information under the statute, or without even a verbal charge having been laid against the plaintiff, and there is no evidence of *bona fides* on his part, he is not entitled to notice of action. Friel v. Ferguson, 15 C. P. (Ont.) 584.

The justice must honestly believe that he was acting in the execution of his duty as a magistrate with respect to some matter within his jurisdiction, or he must honestly believe he was acting in the execution of his office. He must believe in the existence of those facts, which, if they had existed, would have afforded him a justification under the statute, and honestly intended to put the law in force. *Ib.*

In the above case the court expressed an opinion that the fact of a magistrate issuing a warrant without the limits of the county for which he acts, does not necessarily disentitle him to notice of action.

Where a magistrate acts clearly in excess of, or without jurisdiction, he is nevertheless entitled to notice, unless the *bona fides* of his conduct be disproved; but the plaintiff may require that question to be left to the jury, and if they find that he did not honestly believe he was acting as a magistrate, he has no claim to notice. Neill v. McMillan, 25 Q. B. (Ont.) 485; followed in Allan v. McQuarrie, 44 Q. B. (Ont.) 62.

A magistrate sued for issuing an illegal warrant of commitment, is entitled to notice of action if he honestly believed that he

was acting in the execution of his duty as such, even though he had no jurisdiction to issue the warrant. Sinden v. Brown, 17 A. R. 173.

A fishery overseer under "The Fisheries Act," R. S. C. c. 95, 54 and 55 V. c. 43, s. 1, improperly seized a quantity of fish as being illegally caught with seines, when they were taken by hooks and lines. And it was held in an action against the officer, that as he was acting as an overseer in seizing the fish, and not as a justice of the peace *ex officio*, under the Act he was not entitled to notice of action. O'Brien and Miller, 29 S. C. N. B. 114.

A notice of action against a magistrate for false imprisonment, alleged both that the defendant did the acts complained of maliciously, and without any reasonable and probable cause, and also that he acted without jurisdiction, it was held that proof of either one or the other ground would be sufficient, provided there was a count in the declaration to which such proof would be applicable. Robinson v. Tapley, 4 Pugs. & Bur. 361.

The following notice of action:—"And also for that you on" etc., "at" etc., did cause the horse upon which the said J. U. was then riding, to be seized, taken, and led away, and the said J. U. to be obliged to dismount and give up the said horse, and converted and disposed of the said horse to your own use, and also, for that you caused the saddle and bridle and halter then on the said horse to be seized, taken, and carried away, and to be converted and disposed of to your own use, and other wrongs to the said J. U. then and there did" etc., was held sufficient to enable the plaintiff to recover the value of the horse as being his property. Upper v. McFarland, 5 Q. B. (Ont.) 101.

So the following notice was held sufficient: "For that you (the defendant), on" etc., "at" etc., seized and took away divers goods and chattels of the plaintiff," stating the value, "and converted and disposed thereof to your own use, and other wrongs to the said (the plaintiff), did to his great damage of £50, and against the peace of our Lady the Queen." Gillespie v. Wright, 14 Q. B. (Ont.) 52. See as to form of action, Connolly v. Adams, 11 Q. B. (Ont.) 327.

A notice of action was given to a justice of the peace in the following words:—"To John G. Bowes, of the city of Toronto, Esquire, I, Annie Armstrong, of the city of Toronto, in the Province of Canada, spinster, residing with my father, James Armstrong, at No. 148 Duchess Street, in the said city of Toronto, etc," and was signed by the plaintiff, and endorsed "C. P. Armstrong v. Bowes. Notice of Annie Armstrong to John G. Bowes. The within named Annie Armstrong resides at No. 148 Duchess Street, in the city of Toronto, Cameron & McMichael for the plaintiff." It was held that this notice did not conform to the provisions of the statute, not having the place of abode or business of the attorney endorsed, nor the court in which the action was to be brought, stated. Armstrong v. Bowes, 12 C. P. (Ont.) 539. The place of abode or business of the attorney or agent is necessary if the notice is served by the attorney or agent, or the clerk of the attorney for him. A person who serves it as agent for the plaintiff, must endorse his name and place of abode, or business, and the notice must also be endorsed with the name and place of abode of the plaintiff. Moran v. Palmer, 13 C. P. (Ont.) 528.

The endorsement on a notice of action was that it was "given by V. M. of Queen street, in the city of Brantford, in the county of Brant, solicitor, for the within named James Jones." Within was written as follows:—"I do hereby, as solicitor for and on behalf of James Jones, of the village of Jarvis, in the county of Haldimand, farmer, etc." This was held to contain a sufficient statement of the plaintiff's place of abode, and in view of the provisions of the R. S. C. c. 1, s. 7 (44), that where forms are prescribed, slight deviations therefrom, not affecting the substance or calculated to mislead, shall not vitiate them, the court refused to follow Moran v. Palmer, 13 C. P. (Ont.) 528; Jones v. Grace, 17 O. R. 681.

The notice must declare the place of residence of the attorney. The subscription, therefore, of the attorney at the bottom of the notice, "A. B., attorney for the said C. D., Simcoe, Talbot district," was held insufficient. Bates v. Walsh, 6 Q. B. (Ont.) 498; see also Gillespie v. Wright, 14 Q. B. (Ont.) 52.

Where the name and place of residence of the plaintiff's attorney were not endorsed on the notice but added inside at the foot of it, this was held sufficient. Bross v. Huber, 15 Q. B. (Ont.) 625.

The name and place of abode of the plaintiff's attorney need not be endorsed on the back of the notice; it is sufficient if it appears on any part of it. McGilvery v. Gault, 1 Pugs. & Bur. 641; Baxter v. Hallett, Stephen's Dig., N. B. 11. As on the face of it, De Gondouin v. Lewis, 10 A. & E. 117, if he describes his residence as of Birmingham generally, it will be sufficient, Osborn v. Gough, 3 B. & P. 551; but merely "given under my hand at Durham," was holden insufficient, for it was not descriptive at all of the attorney's place of abode. Taylor v. Fenwick, 7 T. R. 635.

A notice describing plaintiff's place of abode, as "of the township of Garafraxa, in the county of Wellington, labourer," without giving the lot and concession was held sufficient. Neill v. McMillan, 25 Q. B. (Ont.) 485.

A notice of action describing the plaintiff's residence as of the township of B., in the county of P., is sufficient. McDonald v. Stuckey, 31 Q. B. (Ont.) 577; see also Neil v. McMillan, 25 Q. B. (Ont.) 485.

This notice may be served before the conviction, order or warrant complained of has been quashed, under the fourth section of the Act. Haylock v. Sparke, 22 L. J. M. C. 67.

A notice of action stated that one month after the service of the notice an action would be brought for malicious arrest, etc., and for the malicious destruction of goods, and for damages for loss of time and injury to business, and for the recovery of costs and expenses, "the same having been committed by you against me in the month of May last at said village of Michipicoten River and at the Town of Port Arthur." The notice was served on the defendant B. personally, and was served on the agent of the defendant C. at the head office of defendant C. at Michipicoten River, and a copy was also left for defendant C. at his place of residence at Port Arthur, and another copy was served on his solicitors. The defendant C. admitted that he had seen a copy of

the notice, but it was not shown at what time or place he had seen it. The notice and service were held sufficient. Bond v. Conmee, 16 A. R. 398, 15 O. R. 716. Affirmed on appeal to the Supreme Court. Cassels Dig. (1893), p. 511.

The notice must state the cause of action explicitly, and in a case where the justice issued a void warrant, directing the constable to take the plaintiff's goods, and in default of goods, to take his body, under which the constable arrested the plaintiff, although there were goods on which he might have levied, a notice alleging a joint trespass against the justice and constable, was held defective in that it did not clearly set forth the grounds of the justice's liability. McGilvery v. Gault, 1 Pugs. & Bur. 641. But if, in case of arrest, as aforesaid, the party arrested applied to a judge for a discharge, and the magistrate appeared before the judge and opposed the application, he would thereby adopt the act of the constable in arresting the plaintiff, and the arrest and imprisonment would be in law the joint act of the justice and constable and a notice so alleging it, would be sufficient. McGilvery v. Gault, 3 Pugs. & Bur. 217.

A notice of action charging a justice with an arrest and imprisonment, must state the time at which the grievance was committed, or otherwise it will be defective. Sprung v. Anderson, 23 C. P. (Ont.) 152.

A notice of action in trespass under "The Division Courts Act," R. S. O. c. 51, s. 230, which is substantially the same as the R. S. O. c. 73, was held insufficient for not stating the time and place of the alleged trespass. Moore v. Gidley, 32 Q. B. (Ont.) 233.

And it seems in an action against a justice for arrest and imprisonment, a notice of action must allege a time and place. In an action against a justice, the notice of action stated that the defendant assaulted plaintiff, imprisoned and kept him in prison for a long time, to wit, four days, and caused him to be illegally arrested, and gave him into the custody of a constable, and illegally committed and sent him in such custody to the gaol at the town of Lindsay, and caused him to be there confined for a long time. The notice was held insufficient, as omitting to state where and

when the assault took place, and the evidence not being confined to the imprisonment at Lindsay. Parkyn v. Staples, 19 C. P. (Ont.) 240.

A notice of action to a person acting as a constable under the C. S. L. C. c. 101, stated the cause of action to the effect following: "For that you on the 20th day of September, 1864, unlawfully did apprehend and seize A. B., and unlawfully did keep him prisoner for a long space of time, to wit, for the space of four days, and other wrongs to the said A. B. then did," it was held that this notice was defective in not shewing the place where the injury complained of was sustained. Bettersworth v. Hough, 16 L. C. R. 419.

The notice of action must contain a statement of the place where the trespass or injury was committed. Kemble v. McGarry, 6 O. S. 570. A notice of action against a magistrate must distinctly specify the place where the act complained of was done. Madden v. Shewer, 2 Q. B. (Ont.) 115.

The place where the plaintiff was imprisoned must be correctly stated. Cronkhite v. Somerville, 3 Q. B. (Ont.) 129. The notice stated a trespass on the 18th October, and on divers other days. The goods were seized on that day, but returned and seized on the 18th of November and sold; the notice was held sufficient. Oliphant v. Leslie, 24 Q. B. (Ont.) 398.

The notice need not describe the form of action, Sabin v. Deburg, 2 Camp., 196; but if it do, and state it incorrectly, the variance will be fatal. Strickland v. Ward, 7 T. R. 631 (n).

A notice that the suit will be brought in the Court of Queen's Bench or Common Pleas is insufficient; the particular court intended must be specified. Bross v. Huber, 18 Q. B. (Ont.) 282; Neville v. Corporation Ross, 22 C. P. (Ont.) 487; see also Armstrong v. Bowes, 12 C. P. (Ont.) 539.

The forms prescribed by this statute must be strictly followed in the notice of action, and where the notice stated that the writ would be issued in one of the superior courts, but it was by mistake issued in the other court, it was held that the notice could not be amended. M'Crum v. Foley, 6 P. R. (Ont.) 164; 10 C. L. J. N. S. 105.

It is no objection that the plaintiff declares by a different Attorney from the one by whom the notice was given and process issued. McKenzie v. Mewburn, 6 O. S. 486.

Where a defendant, after accepting service of an informal notice, added "and agree to accept the same as a sufficient notice of action to me under the statute," it was held that he could not afterwards rely on a defect in the notice. Donaldson v. Haley 13 C. P. (Ont.) 87.

No particular addition or description of the magistrate need be given in the notice. Haacke v. Adamson, 14 C. P. (Ont.) 201.

It is not necessary to give notice of an action for a penalty against a justice of the peace for acting without proper property qualification; a justice acting without qualification is not entitled to such notice. Crabb q.t. v. Longworth, 4 C. P. (Ont.) 283.

Neither is notice of action necessary in an action for not returning a conviction. Grant q.t. v. McFadden, 11 C. P. (Ont.) 122.

By s. 17, the justice, after notice of action and before suit, may tender amends, and after the commencement of the action he may pay money into court in addition to the tender or independently thereof.

Where a justice, on receiving notice of action, makes a tender, which is not paid into court, and the jury find the tender sufficient, the plaintiff is not entitled to have a verdict for the amount tendered; in other words the tender without payment into court entitles the defendant to a verdict. Gidney v. Dibblee, 2 Pugsley, 388.

In New Brunswick, the R. S. c. 129, s. 11, provides that where the plaintiff shall be entitled to recover in any action against a justice, he shall not have a verdict for any damages beyond two pence, or any costs of suit, if it shall be proved that he was guilty of the offence of which he was convicted or was liable for the sum he was ordered to pay, and had undergone no greater punishment than that assigned by law.

The plaintiff having been convicted before defendants, two justices of the peace, of selling spirituous liquors without a license, was fined a certain sum to be levied by distress, and if not paid

within a limited time plaintiff to be imprisoned. At the expiration of the time limited for payment, defendants issued a warrant of commitment without previous issue of distress warrant. In an action against the justices for false imprisonment, the court held that as the plaintiff was guilty of the offence of which she was convicted and her imprisonment did not exceed that assigned by law to the offence, the defendants were entitled to the protection of the statute. Smith v. Simmons, 2 Pugsley, 203.

This statute is substantially the same as the 21st section of the R. S. O. c. 73. See Campbell v. Flewelling, 2 Pugsley, 403. But the statute will not apply if the justice had no right to issue the warrant, and the plaintiff was not liable to pay the amount, which by the warrant he was ordered to pay, and he has suffered a greater punishment than that assigned by law to the offence. Campbell v. Flewelling, *supra*.

But it seems a conviction, though defective, is admissible in evidence, in order to repel any inference of malice and want of probable cause, and also to entitle the justice to the benefit of this section. McGilvery v. Gault, 3 Pugs. & Bur. 217.

This section of the statute is not confined to actions in which the justices had jurisdiction. Bross v. Huber, 15 Q. B. (Ont.) 625. It extends as well to trespass as to case. Haacke v. Adamson, 14 C. P. (Ont.) 201.

The damages must be reduced where the defendant is proved guilty of the offence of which he was convicted. Haacke v. Adamson, 14 C. P. (Ont.) 201.

A warrant of commitment directed the plaintiff to be kept at hard labour, which the Act under which the conviction took place did not authorize. The turnkey swore that the plaintiff "did no hard work in gaol." It was held, however, that this was not sufficient to show that he was not put to compulsory work, so as to bring the defendant within that part of the section which requires it to be proved that the defendant had undergone no greater punishment than that assigned by law to the offence. Graham v. McArthur, 25 Q. B. (Ont.) 478.

The 23rd section of the Act provides for the payment of costs where malice and want of probable cause are alleged. This

section has not been repealed in Ontario by any of the provisions of the Judicature Act, and when an action against a magistrate is dismissed, it should be with costs to the defendant, between solicitor and client. Arscott v. Lilley, 14 A. R. 283, overruling, S. C. 11 O. R. 285.

The Ontario statute 53 V. c. 23, provides for security for costs in actions against justices.

Upon applications for security in such cases the rule should not be more, but rather less onerous than in ordinary applications for security, where the plaintiff is out of the country, and if the plaintiff has property forthcoming and available in execution, security will not be ordered. Bready v. Robertson, 14 P. R. (Ont.) 7.

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 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 shown 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, and it was held that the defendant was entitled to security under the Act. The statute does not intend that the merits of the action should be determined on an application for security. Southwick v. Hare, 13 C. L. T. 141.

ADMINISTERING DRUGS.

Offences of this nature are now governed by ss. 244, 245 and 246 of the Code. The latter section makes it an indictable offence to administer, or cause to be administered to, or taken by any other person, any poison or other destructive or noxious thing with intent to injure, aggrieve or annoy any such person.

The prisoner, unknown to the prosecutrix, put cantharides into her tea with the intent to excite her sexual passion and desire, in

order that he might have connection with her. She drank the tea, suffered much pain, and was very ill in consequence, and it was held that he might be convicted under this section. R. v. Wilkins, 9 Cox, 20.

To constitute the offence of unlawfully administering "any poison or other destructive or noxious thing" under these sections, the thing administered must be noxious in itself, and not merely when taken in excess, and that although it may have been administered with intent to injure or annoy. R. v. Hannah, 13 Cox, 547. See also Tully v. Corrie, 10 Cox, 584.

ADULTERATION OF FOOD, DRUGS AND AGRICULTURAL FERTILIZERS.

The law on this subject is contained chiefly in the R. S. C. c. 107, as amended by the 51 V. c. 24, the 52 V. c. 43, and 53 V. c. 26. Under s. 22, every person who wilfully adulterates any article of food or any drug, or orders any other person so to do, or sells or exposes the same for sale, incurs a penalty, varying in amount according to whether it is injurious to health or not injurious, or is a first or second offence. Under s. 23, s-s. 2, if the person accused proves to the court that he did not know of the article being adulterated, and shows that he could not with reasonable diligence have obtained that knowledge, he shall be liable only to the forfeiture of the article to the Crown.

It has been held that where a purchaser asks only for "milk," no offence is committed by selling skimmed milk, under s. 6 of the (Imp.) 38 & 39 V. c. 63. Lane v. Collins, 8 L. N. 4. But under s. 15 of the Canadian Act, cans in which skimmed milk is sold must bear on their exterior the word "skimmed," in letters of not less than two inches in length, and any person supplying such milk, unless asked for by the purchaser, shall not be entitled to plead the provisions of the Act as a defence.

A conviction under the 52 V. c. 43, s. 1, for supplying milk to a cheese factory from which the cream had been removed was quashed, as neither in the evidence or in the conviction was any offence against the Act shewn, it not having been proved that the milk was supplied to be manufactured. R. v. Westgate, 21 O. R. 621.

As to the powers of the provincial Legislatures. See R. v. Wasson, 17 A. R. 221.

Where a person sold as butter a composition of butter, lard, dripping, tallow, palm oil and the fat of certain seeds, it was held that, unless the seller said that the butter was adulterated, he represented it to be butter and not anything else, and that no hardship was imposed on the seller by this construction, as he could easily ascertain whether the article was pure or not. Fitzpatrick v. Kelly, L. R. 8 Q. B. 337.

The appellant, a tea dealer, was convicted for selling as unadulterated, "green tree" which was adulterated. A person asked for two ounces of "green tea" at the appellant's shop, for which he paid 5½d., the shopman stating that he was authorized by his employers to guarantee all their green teas, of the value of 3s. per pound and upwards, as genuine green teas. On analysis the tea was proved to be painted, or faced with gypsum and Prussian blue, for the purpose of colouring it. The tea was sold in the same state in which it comes from abroad. The tea which is imported from China, as green tea, and generally known as such in the tea trade, is painted and faced in this manner, but this practice is not known to the public. Pure green tea, though not known generally in the trade as "green tree," is imported from Japan. It was held that the conviction was right. Roberts v. Egerton, L. R. 9 Q. B. 494.

A person who sells mustard admixed with flour and turmeric, substances not injurious to health, declaring at the time of such sale that he did not sell the article as pure mustard, is not guilty of any offence under the Act, and it is not necessary to declare the nature and proportion of the substances admixed. Pope and Tearle, L. R. 9 C. P. 499.

Under s. 24 of the R. S. O. c. 107, every compounder or dealer in, and every manufacturer of intoxicating liquor, who has in his possession or in any part of the premises occupied by him as such, any adulterated liquor, knowing it be adulterated, for the possession of which he is unable to account to the satisfaction of the court before which the case is tried, shall be deemed knowingly to have exposed for sale adulterated food, and shall incur for

the first offence a penalty not exceeding one hundred dollars, and for each subsequent offence a penalty not exceeding four hundred dollars. See White v. Bywater, 19 Q. B. D. 582.

AFFRAY.

An affray is the act of fighting in any public street or highway, or fighting to the alarm of the public in any other place to which the public have access.

2. Every one who takes part in an affray is guilty of an indictable offence and liable to one year's imprisonment with hard labour. Code, s. 90.

If the fight is in private it will be an assault. It differs from a riot inasmuch as there must be three persons to constitute the latter, and also in not being premeditated.

AGENCY.

In regard to agency, a man is in general liable for what he authorizes another person to do. Thus where several persons combine for an unlawful purpose, any act by one of such persons, in prosecution of such purpose, renders all liable. R. v. Curtley, 27 Q. B. (Ont.) 613; R. v. Slavin, 17 C. P. (Ont.) 205. See Accessories, *ante*, p. 308.

So the owner of a shop is criminally liable for any unlawful act done therein in his absence by a clerk or assistant, as for instance for the sale of liquor without license by a female attendant. R. v. King, 20 C. P. (Ont.) 246.

The general rule of law is that no one can be made criminally responsible for the acts of third persons, but in some cases a man may be brought within a penal statute by the acts of his agents or servants. The employment of an agent in the defendant's usual course of business, is sufficient evidence in such cases, whence the magistrates may if they think fit, presume that such agent was authorized to do the prohibited act with which it is sought to charge the principal. Attorney-General v. Siddon, 1 C. & J. 220.

Where a master intends a servant to commit some offence, he should be summoned as principal, and the servant as aiding and

abetting, Wilson v. Stewart, 3 B. & S. 913; or the master may be charged with aiding the servant. Howells v. Wynne, 15 C.B.N.S. 3. In some cases the master may be responsible for the criminal act of his servant, though done without his knowledge—as, for example, under "The Licensing Act." Mullins v. Collins, 38 J. P. 34.

But the sale by a servant of any book, magazine, pamphlet or other thing, whether periodical or not, shall not make his employer criminally responsible in respect of defamatory matter contained therein unless it be proved that such employer authorized such sale knowing that such book, magazine, pamphlet or other thing contained defamatory matter, or, in case of a number or part of a periodical, that defamatory matter was habitually contained in such periodical. Code, s. 298 (2).

And the servant of a master who *bona fide* acts in obedience to the instructions of the latter, and on demand made by or on behalf of the prosecutor gives full information as to his master, is not liable to any prosecution in respect of the forgery of trade marks or fraudulent marking of merchandise. Code, s. 454.

And no factor or agent shall be guilty of theft by pledging or giving a lien on any goods or document of title to goods intrusted to him for the purpose of sale or otherwise, for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving a lien on the same, together with the amount of any bill of exchange accepted by him for or on account of his principal.

And if any servant, contrary to the orders of his master, takes from his possession any food for the purpose of giving the same or having the same given to any horse or other animal belonging to or in the possession of his master, the servant so offending shall not, by reason thereof, be guilty of theft. R. S. C. c. 164, s. 63. Code, s. 305 (5) (6). See further as to agents, ss. 308, 309, and 310 of the Code.

AGGRAVATED ASSAULTS.

As to this, see s. 263 of the Code. See also assaults, and see *ante* pp. 123-124.

AGGRESSIONS BY SUBJECTS OF FOREIGN STATES.

The R. S. C. c. 146, ss. 6 and 7 and s. 68 of the Code now govern this subject. The sixth section of the statute does not apply to a British subject, but only to a citizen or subject of any foreign state or country. See R. v. McMahon, 26 Q. B. (Ont.) 195.

The seventh section of the statute applies to the case of a British subject. R. v. Lynch, 26 Q. B. (Ont.) 208.

Where the prisoner is proved to have said he was an American citizen, and had been in the American army, and there is no evidence offered to contradict this, it is evidence against the prisoner as his own admissions and declarations of the country to which he belonged. R. v. Slavin, 17 C. P. (Ont.) 205.

Where a large body of armed men enter Canada, with intent to levy war, any person joining them *in any character*, though in itself peaceable, such as reporter merely, is equally liable with the others, for there is a common unlawful purpose, and any act in pursuance of it involves a share of the common guilt. R. v. Lynch, 26 Q. B. (Ont.) 208.

It is not necessary in order to render a party amenable to the statute, that he should actually have arms upon his person, it is quite sufficient that he is present and concerned with those who are armed, for all who are present at the commission of the offence are principals, and are alike culpable in law. R. v. Slavin, 17 C. P. (Ont.) 205. See also R. v. Magrath, 26 Q. B. (Ont.) 385.

ALLEGIANCE.

See oaths of allegiance.

ANIMALS, CRUELTY TO.

See cruelty to animals.

APPEALS.

See as to appeals to the sessions *ante* p. 220. And as to appeals to the judge of a County Court of Ontario. See *ante* p. 221.

APOSTACY.

The Imperial Statute 9 & 10 Wm. III. c. 32, s. 1, provides that if any one educated in or having made profession of the Christian Religion, by writing, printing, teaching or advised speaking, maintains that there are more Gods than one, or denies the Christian Religion to be true or the Holy Scripture to be of Divine authority, for the second offence, besides being incapable of bringing an action, or being guardian, executor, legatee or grantee, must suffer imprisonment for three years without bail. There shall be no prosecution for such words spoken, unless information of such words be given on oath before a justice, within four days after they are spoken, and the prosecution be within three months after such information. The offender is to be discharged, if within four months after his first conviction he renounces his error.

APPRENTICE.

The R. S. O. c. 142, contains provisions respecting apprentices and minors. When the defendant, a justice of the peace, convicted one Q., an apprentice, for having absented himself from his master's service without leave, and adjudged that he should give sufficient security to make satisfaction to his master, according to the statute, and in default of such satisfaction to be imprisoned in the common gaol for two months, unless the said satisfaction be sooner given, the conviction was quashed—first, because the articles of apprenticeship were not within the Act, for it appeared that the apprentice was a minor, and the articles were not executed by any one on his behalf, and secondly, because imprisonment for two months was not authorized by the statute. R. v. Robertson, 11 Q. B. (Ont.) 621.

ARREST.

Section 552 of the Code specifies a large number of cases in which any one found committing an offence may be arrested without warrant by any one, and s-s. 2 of s. 552 defines the cases in which a peace officer may arrest without warrant any one found committing any of the offences mentioned therein. As to the meaning of the expression "peace officer" see Code, s. 3 (*s*). And

under s. 142 of the Code every one is guilty of an indictable offence, and liable to six months imprisonment, who having reasonable notice that he is required to assist any sheriff * * magistrate or peace officer, in the execution of his duty in arresting any person, or in preserving the peace, without reasonable excuse omits to do so.

When it is intended to arrest an offender on the ground of his being "found committing" an offence against these Acts, the offender must be taken either in the act of commiting the offence or on fresh pursuit. Hanway v. Boultbee, 1 M. & R. 15, but not on his return after committing the offence. R. v. Phelps, C. & M. 180. The words "found committing" mean either seeing the party actually committing the offence or pursuing him immediately and continuously after his committing it. R. v. Curran, 3 C. & P. 397. Pursuit after an interval of three hours would not be a fresh pursuit. Downing v. Capel, L. R. 2 C. P. 461; Leete v. Hart, 37 L. J. C. P. 157.

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

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

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

Where a magistrate allows a prisoner to depart without examining into the charge against him with a direction to appear the next morning at the police office, and in the meantime on the ground that he was insulted by the prisoner when in custody before him the previous evening, gives verbal instructions to a constable to

apprehend him and take him to a station-house or gaol, such imprisonment is illegal, and the magistrate cannot justify the arrest. Powell v. Williamson, 1 Q. B. (Ont.) 154.

Every one duly authorized to execute a warrant to arrest who thereupon arrests a person, believing in good faith and on reasonable and probable grounds that he is the person named in the warrant, shall be protected from criminal responsibility to the same extent and subject to the same provision as if the person arrested had been the person named in the warrant.

Every one called on to assist the person making such arrest, and believing that the person in whose arrest he is called on to assist is the person for whose arrest the warrant is issued, and every gaoler who is required to receive and detain such person, shall be protected to the same extent and subject to the same provisions as if the arrested person had been the person named in the warrant. Code, s. 20.

Every one acting under a warrant or process which is bad in law on account of some defect in substance or in form apparent on the face of it, if he in good faith and without culpable ignorance and negligence believes that the warrant or process is good in law, shall be protected from criminal responsibility to the same extent and subject to the same provisions as if the warrant or process were good in law, and ignorance of the law shall in such case be an excuse: Provided, that it shall be a question of law whether the facts of which there is evidence may or may not constitute culpable ignorance or negligence in his so believing the warrant or process to be good in law. *Ib.* s. 21.

Every peace officer who, on reasonable and probable grounds, believes that an offence for which the offender may be arrested without warrant has been committed, whether it has been committed or not, and who, on reasonable and probable grounds, believes that any person has committed that offence, is justified in arresting such person without warrant, whether such person is guilty or not. *Ib.* s. 22.

Every one called upon to assist a peace officer in the arrest of a person suspected of having committed such offence as last aforesaid

is justified in assisting, if he knows that the person calling on him for assistance is a peace officer, and does not know that there is no reasonable grounds for the suspicion. Code, s. 23.

Every one is justified in arresting without warrant any person whom he finds committing any offence for which the offender may be arrested without warrant, or may be arrested when found committing. *Ib.* s. 24.

If any offence for which the offender may be arrested without warrant has been committed, any one who on reasonable and probable grounds, believes that any person is guilty of that offence is justified in arresting him without warrant, whether such person is guilty or not. *Ib.* s. 25.

Every one is protected from criminal responsibility for arresting without warrant any person whom he, on reasonable and probable grounds, believes he finds committing by night any offence for which the offender may be arrested without warrant. *Ib.* s. 26.

Every peace officer is justified in arresting without warrant any person whom he finds committing any offence. *Ib.* s. 27.

Every one is justified in arresting without warrant any person whom he finds by night committing any offence.

Every peace officer is justified in arresting without warrant any person whom he finds lying or loitering in any highway, yard or other place by night, and whom he has good cause to suspect of having committed or being about to commit any offence for which an offender may be arrested without warrant. *Ib.* s. 28.

Every one is protected from criminal responsibility for arresting without warrant any person whom he, on reasonable and probable grounds, believes to have committed an offence and to be escaping from and to be freshly pursued by those whom he, on reasonable and probable grounds, believes to have lawful authority to arrest that person for such offence. *Ib.* s. 29.

Nothing in this Act shall take away or diminish any authority given by any Act in force for the time being to arrest, detain or put any restraint on any person. *Ib.* s. 30.

Every one justified or protected from criminal responsibility in executing any sentence, warrant or process, or in making any

arrest, and every one lawfully assisting him, is justified, or protected from criminal responsibility, as the case may be, in using such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, process or warrant can be executed or the arrest effected by reasonable means in a less violent manner. Code, s. 31.

It is the duty of every one executing any process or warrant to have it with him, and to produce it if required.

It is the duty of every one arresting another, whether with or without warrant, to give notice, where practicable, of the process or warrant under which he acts, or of the cause of the arrest.

A failure to fulfil either of the two duties last mentioned shall not of itself deprive the person executing the process or warrant, or his assistants, or the person arresting, of protection from criminal responsibility, but shall be relevant to the inquiry whether the process or warrant might not have been executed, or the arrest effected, by reasonable means in a less violent manner. *Ib.* s. 32.

Every peace officer proceeding lawfully to arrest, with or without warrant, any person for any offence for which the offender may be arrested without warrant, and every one lawfully assisting in such arrest, is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by such flight, unless such escape can be prevented by reasonable means in a less violent manner. *Ib.* s. 33.

Every private person proceeding lawfully to arrest without warrant any person for any offence for which the offender may be arrested without warrant is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by flight, unless such escape can be prevented by reasonable means in a less violent manner: Provided, that such force is neither intended nor likely to cause death or grievous bodily harm. *Ib.* s. 34.

Every one proceeding lawfully to arrest any person for any cause other than such offence as in the last section mentioned is justified, if the person to be arrested takes to flight to avoid arrest,

in using such force as may be necessary to prevent his escape by flight, unless such escape can be prevented by reasonable means in a less violent manner: Provided such force is neither intended nor likely to cause death or grievous bodily harm. Code, s. 35.

Every one who has lawfully arrested any person for any offence for which the offender may be arrested without warrant is protected from criminal responsibility in using such force in order to prevent the rescue or escape of the person arrested as he believes, on reasonable grounds, to be necessary for that purpose. *Ib.* s. 36.

Every one who has lawfully arrested any person for any cause other than an offence for which the offender may be arrested without warrant is protected from criminal responsibility in using such force in order to prevent his escape or rescue as he believes, on reasonable grounds, to be necessary for that purpose: Provided that such force is neither intended nor likely to cause death or grievous bodily harm. *Ib.* s. 37.

Every one who witnesses a breach of the peace is justified in interfering to prevent its continuance or renewal and may detain any person committing or about to join in or renew such breach of the peace, in order to give him into the custody of a peace officer: Provided that the person interfering uses no more force than is reasonably necessary for preventing the continuance or renewal of such breach of the peace, or than is reasonably proportioned to the danger to be apprehended from the continuance or renewal of such breach of the peace. *Ib.* s. 38.

Every peace officer who witnesses a breach of the peace, and every person lawfully assisting him, is justified in arresting any one whom he finds committing such breach of the peace, or whom he, on reasonable and probable grounds, believes to be about to join in or renew such breach of the peace.

Every peace officer is justified in receiving into custody any person given into his charge as having been a party to a breach of the peace by one who has or whom such peace officer, on reasonable and probable grounds, believes to have witnessed such breach of the peace. *Ib.* s. 39.

ARSON.

Every one is guilty of the indictable offence of arson, and liable to imprisonment for life who wilfully sets fire to any building or structure whether such building, erection or structure is completed or not, or to any stack of vegetable produce or of mineral or vegetable fuel, or to any mine or any well of oil or other combustible substance, or to any ship or vessel, whether completed or not, or to any timber or materials placed in any shipyard for building or repairing or fitting out any ship, or to any of Her Majesty's stores or munitions of war. R. S. C. c. 163, ss. 2 to 5, 7, 8, 19, 28, 46 and 47. Code, s. 482.

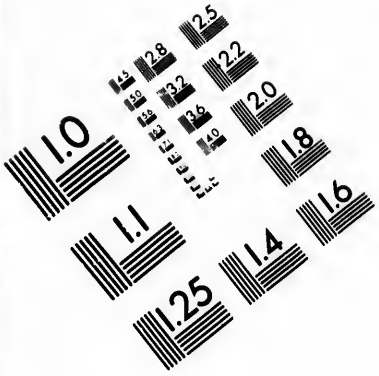
Every one who causes any event by an act which he knew would probably cause it, being reckless whether such event happens or not, is deemed to have caused it wilfully for the purposes of this part.

Nothing shall be an offence under any provision contained in this part unless it is done without legal justification or excuse, and without colour of right.

Where the offence consists in an injury to anything in which the offender has an interest, the existence of such interest, if partial, shall not prevent his act being an offence, and if total, shall not prevent his act being an offence, if done with intent to defraud. R. S. C. c. 168, ss. 60 and 61. Code, s. 481.

Under the former Act the offence might be committed when a party set fire to a house, whether it was then in his possession or the possession of any other person, provided there was an intent to injure or defraud some third person; as for instance when a man set fire to his own house to defraud an insurance company. R. v. Bryans, 12 C. P. (Ont.) 161.

Under the Code this would now be an offence, and it is necessary to prove an intent to injure or defraud which under the former law was a part of the offence, though in the ordinary case of arson all that is now required is that the act be wilfully done, without legal justification or excuse, and without colour of right. See s. 481. And no negligence or mischance will amount to such a burning. 2 Russ. Cr., 1025.



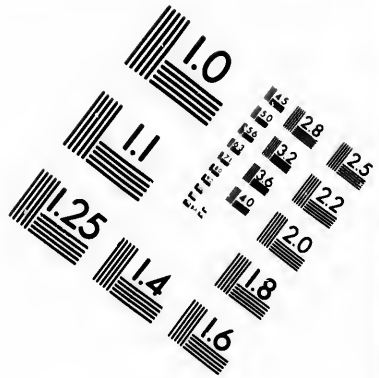
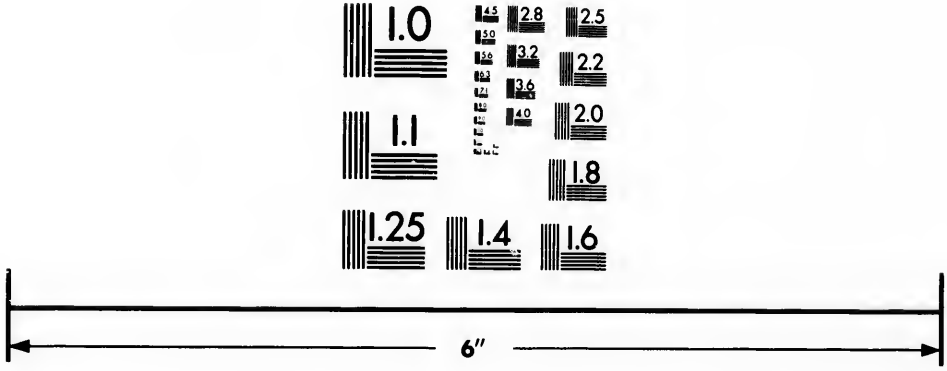
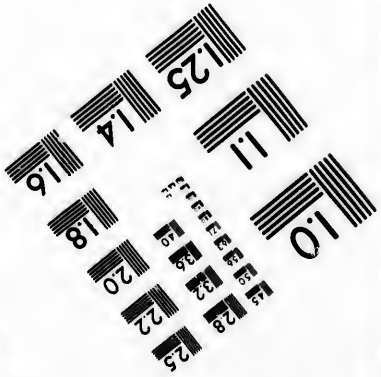


IMAGE EVALUATION TEST TARGET (MT-3)





Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

See as to the old law R. v. Cronin, 36 Q. B. (Ont.) 342; R. v. Saucie, 1 Pugs. & Bur. 611; R. v. Child, L. R. 1 C. C. R. 307.

The 482nd section of the Code, extends the meaning of the term building. Under this section, the building need not necessarily be a completed or finished structure, it is sufficient if it is a connected and entire structure. R. v. Manning, L. R. 1 C. C. R. 338.

An "unoccupied" building may come within the statute, for if no one else is in occupation or possession of the building, the owner is in law in "possession." R. v. Cronin, 36 Q. B. (Ont.) 342.

Under the 483rd section of the Code, wilfully attempting to set fire to anything, the subject of arson or wilfully setting fire to any substance so situated that the offender knows that anything the subject of arson is likely to catch fire therefrom is an indictable offence.

The prisoner saturated a blanket with coal oil, and placed it so that if the flames were communicated to it, the building would have caught fire. He then lighted a match and held it in his fingers till it was burning well, and then put it down towards the blanket and got it within an inch or two of the blanket when the match went out. The blaze did not touch the blanket, and the prisoner threw away the match and left without making any second attempt. No fire was actually communicated to the oil or blanket, it was held that these were overt acts immediately and directly tending to the execution of the principal crime, and that the prisoner was properly convicted of an attempt at arson. R. v. Goodman, 22 C. P. (Ont.) 338.

Setting fire to a quantity of straw on a lorrie is not setting fire to a stack of straw, the straw being on the way to market, and it not appearing whether it was being removed to or from a stack. R. v. Satchwell, L. R. 2 C. C. R. 21.

The general rule that a person intends the natural consequences of his act, applies in arson as well as in other cases. R. v. Cronin, 36 Q. B. (Ont.) 342.

A party intending the commission of an unlawful act is not in all cases responsible for the consequences which ensue. A sailor on board a ship entered a part of the vessel for the purpose of

stealing rum, and while tapping a cask of rum a lighted match held by him, came in contact with the spirits which were flowing from the cask tapped by him, and a conflagration ensued, which destroyed the vessel, and it was held that a conviction for arson of the ship could not be upheld. R. v. Faulkner, 13 Cox, 550, but this was on the ground that there was no offence unless the act was malicious and wilful. See R. v. Pembliton, L. R. 2 C. C. R. 119.

ASSAULTS.

An assault is the act of intentionally applying force to the person of another, directly or indirectly, or attempting or threatening, by any act or gesture, to apply force to the person of another, if the person making the threat has, or causes the other to believe, upon reasonable grounds, that he has present ability to effect his purpose, and in either case, without the consent of the other or with such consent, if it is obtained by fraud. Code, s. 258.

As to assaults in general, see Code, ss. 258 to 265.

Aggravated assaults as well as assaults upon any female or upon any male child whose age does not, in the opinion of the magistrate, exceed fourteen years, and assaults upon any peace officer or public officer in the lawful performance of his duty come within the provisions of that part of the Code relating to the summary trial of indictable offences. See Code, s. 783, (*c*), (*d*) & (*e*).

As to summary conviction for assaults, see Code, s. 864, *ante*, p. 197.

Every one unlawfully assaulted, not having provoked such assault, is justified in repelling force by force, if the force he uses is not meant to cause death or grievous bodily harm, and is no more than is necessary for the purpose of self-defence; and every one so assaulted is justified, though he causes death or grievous bodily harm, if he causes it under reasonable apprehension of death or grievous bodily harm from the violence with which the assault was originally made or with which the assailant pursues his purpose, and if he believes, on reasonable grounds, that he cannot otherwise preserve himself from death or grievous bodily harm. Code, s. 45.

Every one who has without justification assaulted another, or has provoked an assault from that other, may nevertheless justify force subsequent to such assault, if he uses such force under reasonable apprehension of death or grievous bodily harm from the violence of the person first assaulted or provoked, and in the belief, on reasonable grounds, that it is necessary for his own preservation from death or grievous bodily harm: Provided, that he did not commence the assault with intent to kill or do grievous bodily harm, and did not endeavour at any time before the necessity for preserving himself arose, to kill or do grievous bodily harm: Provided also, that before such necessity arose he declined further conflict, and quitted or retreated from it as far as was practicable.

Provocation, within the meaning of this and the last preceding section, may be given by blows, words or gestures. Code, s. 46.

Every one is justified in using force in defence of his own person, or that of any one under his protection, from an assault accompanied with insult: Provided, that he uses no more force than is necessary to prevent such assault, or the repetition of it: Provided also, that this section shall not justify the wilful infliction of any hurt or mischief disproportionate to the insult which the force used was intended to prevent. *Ib.* s. 47.

Every one who is in peaceable possession of any movable property or thing, and every one lawfully assisting him, is justified in resisting the taking of such thing by any trespasser, or in retaking it from such trespasser, if in either case he does not strike or do bodily harm to such trespasser; and if, after any one being in peaceable possession as aforesaid has laid hands upon any such thing, such trespasser persists in attempting to keep it or to take it from the possessor, or from any one lawfully assisting him, the trespasser shall be deemed to commit an assault without justification or provocation. *Ib.* s. 48.

Every one who is in peaceable possession of any movable property or thing under a claim of right, and every one acting under his authority, is protected from criminal responsibility for defending such possession, even against a person entitled by law to the pos-

session of such property or thing, if he uses no more force than is necessary. Code, s. 49.

Every one who is in peaceable possession of any movable property or thing, but neither claims right thereto nor acts under the authority of a person claiming right thereto, is neither justified nor protected from criminal responsibility for defending his possession against a person entitled by law to the possession of such property or thing. *Ib.* s. 50.

Every one who is in peaceable possession of a dwelling-house, and every one lawfully assisting him or acting by his authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of such dwelling-house, either by night or day, by any person with the intent to commit any indictable offence therein. *Ib.* s. 51.

Every one who is in peaceable possession of a dwelling-house, and every one lawfully assisting him or acting by his authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of such dwelling-house by night by any person, if he believes, on reasonable and probable grounds, that such breaking and entering is attempted with the intent to commit any indictable offence therein. *Ib.* s. 52.

Every one who is in peaceable possession of any house or land, or other real property, and every one lawfully assisting him or acting by his authority, is justified in using force to prevent any person from trespassing on such property, or to remove him therefrom, if he uses no more force than is necessary; and if such trespasser resists such attempt to prevent his entry or to remove him such trespasser shall be deemed to commit an assault without justification or provocation. *Ib.* s. 53.

Every one is justified in peaceably entering in the day-time to take possession of any house or land to the possession of which he, or some person under whose authority he acts, is lawfully entitled.

If any person, not having or acting under the authority of one having peaceable possession of any such house or land with a claim of right, assaults any one peaceably entering as aforesaid,

for the purpose of making him desist from such entry, such assault shall be deemed to be without justification or provocation.

If any person having peaceable possession of such house or land with a claim of right, or any person acting by his authority, assaults any one entering as aforesaid, for the purpose of making him desist from such entry, such assault shall be deemed to be provoked by the person entering. Code, s. 54.

It is lawful for the master or officer in command of a ship on a voyage to use force for the purpose of maintaining good order and discipline on board of his ship, provided that he believes, on reasonable grounds, that such force is necessary, and provided also that the force used is reasonable in degree. *Ib.* s. 56.

Every one is protected from criminal responsibility for performing with reasonable care and skill any surgical operation upon any person for his benefit, provided that performing the operation was reasonable, having regard to the patient's state at the time, and to all the circumstances of the case. *Ib.* s. 57.

Every one authorized by law to use force ... criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess. *Ib.* s. 58.

An assault is an attempt unlawfully to apply any, the least actual force, to the person of another, directly or indirectly. R. v. Shaw, 23 Q. B. (Ont.) 619.

There need not be an actual touching of the person assaulted, but mere words never amount to an assault. R. v. Langford, 15 O. R. 52.

A threat to shoot a person, coupled with the act of presenting a loaded firearm at him, although it is at half-cock, is in law an assault. Osborne v. Veitch, 1 F. & F. 317.

To discharge a pistol loaded with powder and wadding at a person, within such a distance that he might have been hit, is an assault. R. v. Cronan, 24 C. P. (Ont.) 102.

There can be no assault where the party consents to the act done. R. v. Guthrie, L. R. 1 C. C. R. 243; R. v. Connolly, 26 Q. B. (Ont.) 320.

The defendants were convicted for unlawfully assaulting F., "by standing in front of the horses and carriage, driven by the said F., in a hostile manner, and thereby forcibly detaining him, the said F. on the public highway against his will." The conviction was quashed because it alleged the detention of the driver, as occasioned by standing in front of the horses only, and not in front of the horses and carriage, and it was a question of law whether detaining the horses was also a detention of the driver. R. v. McElligott, 3 O. R. 535.

A magistrate has no right to order an examination of the person of a prisoner. An examination by medical men, in pursuance of such an order, of the person of a female, in custody upon the charge of concealing the birth of her illegitimate child, constitutes an assault. Agnew v. Dobson, 13 Cox, 625. As to woman under sentence of death, see Code, s. 730.

Using insulting and abusive language to a person in his own office, and on the public street, and using the fist in a threatening and menacing manner to the face and head of a person, amounts to an assault. R. v. Harmer, 17 Q. B. (Ont.) 555.

A conductor on a train is not liable for an assault under the 51 V. c. 29, s. 248, in attempting to put a person off the cars who refuses, after being several times requested, to pay his proper fare. R. v. Faneuf, 5 L. C. J. 167. No doubt, however, if the conductor used more force than was necessary, it would amount to an assault. Moderate correction of a servant, or scholar, by his master, is not an assault; but wounding, kicking and tearing a person's clothes, do not fall within the scope of moderate correction. Mitchell v. Defries, 2 Q. B. (Ont.) 430.

Chastisement unnecessary for the maintenance of school discipline, and out of proportion to the nature of the offence, and springing from motives of caprice, anger, or bad temper, cannot be justified by a schoolmaster. Brisson v. Lafontaine, 8 L. C. J. 173. But it is lawful for every parent, or person in the place of a parent, schoolmaster or master, to use force by way of correction towards any child, pupil or apprentice under his care, provided that such force is reasonable under the circumstances. Code, s. 55.

The owner of goods which are wrongfully in the possession of another, may justify an assault in order to repossess himself of them, no unnecessary violence being used. Blades v. Higgs, 10 C. B. N. S. 713.

A common assault is an indictable offence, and is so punishable. See Code, s. 265; R. v. Taylor, L. R. 1 C. C. R. 194. The punishment usually inflicted is fine, imprisonment, and sureties to keep the peace; and the court of Quarter Sessions has a general jurisdiction to fine and imprison for an assault. Ovens v. Taylor, 19 C. P. (Ont.) 49-52.

If, on the hearing of a charge of assault evidence be given of a higher offence, such as rape, the justices may still convict of the common assault, provided they disbelieve the evidence as to the other point. *Ex parte* Thompson, 6 H. & N. 193; Wilkinson v. Dutton, 3 B. & S. 821.

A person making a *bona fide* claim of right to be present, as one of the public, in a law court at the hearing of a suit, is not justified in committing an assault upon a police constable and an official who endeavour to remove him. Such a claim of right does not oust the jurisdiction of the magistrate who has to try the charge of assault, and he may refuse to allow cross-examination, and to admit evidence in respect of such a claim. R. v. Eardley, 49 J. P. 551.

Under s. 842 (8) of the Code, no justice shall hear and determine any case of assault and battery in which any question arises as to the title to any lands, tenements or hereditaments, or any interest therein or accruing therefrom or as to any bankruptcy or insolvency or any execution under the process of any court of justice.

Section 259 of the Code, relates to indecent assaults upon females, s. 260 to sodomy or indecent assault upon males. In the former case if the girl in respect of whom the offence is charged to have been committed or any other child of tender years who is tendered as a witness does not in the opinion of the court or justices understand the nature of an oath, the evidence of such girl or other child of tender years may be received though not given upon

oath if in the opinion of the court or justices as the case may be, such girl or other child of tender years is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth. But such testimony must be corroborated by some other material evidence in support thereof implicating the accused. Code, s. 685; see also the 56 V. c. 31, s. 25.

If a girl over the age of fourteen consents to the act, there is no offence. R. v. Johnson, 10 Cox, 144. There cannot be an indecent assault where there is consent. R. v. Wollaston, 12 Cox, 180. Unless the person is under fourteen, see s. 261 of the Code.

Where a child submits to an act, not knowing its nature, it is an assault, though if there were a positive will and consent exercised, it would not be. R. v. Lock, 2 C. C. R. 10.

Assault is one of the offences in respect of which if a person is summarily convicted before a justice, the latter may if it is a first conviction discharge the offender upon his making such satisfaction to the person aggrieved for damages and costs, or either of them, as are ascertained by the justice. Code, s. 861. See also s. 834 as to costs on conviction for assault.

Assaults causing actual bodily harm, and aggravated assaults are governed by ss. 262, 263 and 783 of the Code.

Under s. 713 of the Code every count shall be deemed divisible; and if the commission of the offence charged, as described in the enactment creating the offence or as charged in the count, includes the commission of any other offence the person accused may be convicted of any offence so included which is proved, although the whole offence charged is not proved; or he may be convicted of an attempt to commit any offence so included.

2. Provided, that on a count charging murder, if the evidence proves manslaughter but does not prove murder the jury may find the accused not guilty of murder but guilty of manslaughter, but shall not on that count find the accused guilty of any other offence. See also Code, s. 633.

Under the foregoing section, where the indictable offence includes an assault, there may be an acquittal of the offence and a conviction of assault, if the evidence warrants such finding.

But under this section there cannot be a conviction of an assault unless the assault is included in, and forms parcel of the offence, and the assault must also be committed in attempting to commit the offence, and in pursuance of that object. See R. v. Dingman, 22 Q. B. (Ont.) 283; R. v. Cregan, 1 Hannay, 36; R. v. Ganes, 22 C. P. (Ont.) 185; R. v. Smith, 34 Q. B. (Ont.) 552; R. v. Sirois, 27 S. C. N. B. 610.

So on an indictment for shooting with intent, the prisoner, if acquitted of the indictable offence, may be convicted of a common assault. R. v. Cronan, 24 C. P. (Ont.) 106.

So on an indictment for an assault with intent to do grievous bodily harm, if the jury find the assault committed, but negative the intent, they may convict of a common assault. R. v. Lackey, 1 Pugs. & Bur. 194.

So on a count for assaulting, beating, wounding and occasioning actual bodily harm against the statute, the prisoner may be convicted of a common assault. R. v. Oliver, 8 Cox, 384.

The prisoner was charged with an assault with intent to commit murder, in that he had opened a railway switch with intent to cause a collision, whereby two trains did come into collision causing a severe injury to a person in one of them, it was held that this was not an assault with intent to commit murder within the meaning of the Extradition Treaty. *Re* Lewis, 6 P. R. (Ont.) 236.

As to assaults on constables employed on government railways. See R. S. C. c. 38, s. 56.

To support a charge of an assault on a constable in the execution of his duty, it is not necessary that the defendant should know that he was a constable then in the execution of his duty; it is sufficient that the constable should have been acting in the execution of his duty, and then been assaulted. R. v. Forbes, 10 Cox, 362. If a constable sees an assault committed, he may, recently after that assault, and before all danger of further violence has ceased, apprehend the offender; and if in so doing he is resisted

and assaulted, the person assaulting is liable to be convicted of assaulting a constable in the execution of his duty. R. v. Light, 7 Cox, 389.

If a constable in making an arrest is assaulted, and it appears that the constable was acting at the time in the due execution of his duty, and had a right to make the arrest, the person committing the assault may be convicted of assaulting the constable in the execution of his duty. See R. v. Light, 7 Cox, 389. Code, s. 263.

But if the constable had no right to make the arrest, the person assaulting him cannot be convicted of assaulting a constable in the execution of his duty. Galliard v. Laxton, 9 Cox, 127; R. v. Saunders, L. R. 1 C. C. R. 75.

It must be remembered, however, that if the party used more force and violence than was necessary, he might be convicted of a common assault. R. v. Mabel, 9 C. & P. 474.

If the apprehension is unlawful, the prisoner cannot be convicted of wounding the constable with intent to prevent his lawful apprehension. R. v. Marsden, 11 Cox, 90.

It is submitted, notwithstanding the decision of the majority of the court, in R. v. Lantz, 19 N. S. R. 1, that a constable executing civil process, is not a peace officer in the due execution of his duty, so as to be entitled to the protection of this clause, and a party assaulting him under such circumstances would be liable only for a common assault.

Where a police officer attempts an arrest, by virtue of a warrant, for an offence punishable on summary conviction, the person resisting such arrest, and assaulting the officer, in so doing, cannot be convicted of such assault, if the officer has not the warrant in his possession at the time of the arrest—a constable not being authorized to arrest in such case, unless he has the warrant in his possession at the time. Codd v. Cabe, L. R. 1 Ex. D. 352. See Code, ss. 32 and 843.

If a warrant of commitment, issued by a justice of the peace, is good on its face, and the magistrate had jurisdiction in the case, it is a justification to a constable to whom it is given to be executed, and a person resisting him is guilty of an assault. But a warrant

good on its face, will not protect a justice, if the warrant has no valid foundation, as if it is issued without any proper information being laid. Appleton v. Lepper, 20 C. P. (Ont.) 138; see *ante* p. 51. Where the warrant was based on a conviction for an unlawful assault, it was held not necessary, in order to make the warrant legal, and a justification to the constable that it should be stated in the conviction and warrant that the complainant had requested the magistrate to proceed summarily.

A warrant of commitment issued by two justices of the peace for non-payment of a fine and costs imposed on J. D. who had been convicted of an offence under the "Indian Act," directed the constables of the county of B. to take and deliver J. D. to the keeper of the common gaol of the county, to be kept there for two months unless the fine and costs imposed including costs of conveying to the gaol should be sooner paid. The constable having been assaulted in attempting to execute this warrant, the court 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 in the execution of his duty, notwithstanding that the award of punishment may have been erroneous in directing imprisonment for non-payment of the fine and costs including costs of conveying to gaol, as not authorized by the "Indian Act." R. v. King, 18 O. R. 566; see Code, s. 18.

An officer of justice who strikes a prisoner without necessity is guilty of an unjustifiable assault. Courcelles v. City Montreal, 7 Mont. S. C. 154.

An assault is none the less a breach of the peace because it is committed by a husband upon the person of his own wife, and the wife is a competent person to make the complaint. *Ex parte* Abell, 2 Pugs. & Bur. 600.

A battery is not necessarily a forcible striking with the hand or stick or the like, but includes every touching or laying hold, however trifling, of another person or his clothes in an angry, revengeful, rude, insolent or hostile manner, for instance, jostling another out of the way. Thus, if a man strikes at another with a

cane or fist, or throws a bottle at him, if he miss, it is an assault, if he hit, it is a battery.

But it is not a battery merely to lay hands on another to attract his attention, provided it be not done hostilely. Coward v. Baddeley, 4 H. & N. 478.

ATTEMPTS.

Every one who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing his object is guilty of an attempt to commit the offence intended whether under the circumstances it was possible to commit such offence or not.

The question whether an act done or omitted with intent to commit an offence is or is not only preparation for the commission of that offence, and too remote to constitute an attempt to commit it, is a question of law. Code, s. 64.

Every one is guilty of an indictable offence and liable to seven years' imprisonment who attempts, in any case not hereinbefore provided for, to commit any indictable offence for which the punishment is imprisonment for life, or for fourteen years, or for any term longer than fourteen years. Code, s. 528.

Every one who attempts to commit any indictable offence for committing which the longest term to which the offender can be sentenced is less than fourteen years, and no express provision is made by law for the punishment of such attempt, is guilty of an indictable offence and liable to imprisonment for a term equal to one-half of the longest term to which a person committing the indictable offence attempted to be committed may be sentenced. Code, s. 529.

Every one is guilty of an indictable offence and liable to one year's imprisonment who attempts to commit any offence under any statute for the time being in force and not inconsistent with this Act, or incites or attempts to incite any person to commit any such offence, and for the punishment of which no express provision is made by such statute. Code, s. 530.

When the complete commission of the offence charged is not proved but the evidence establishes an attempt to commit the

offence, the accused may be convicted of such attempt and punished accordingly. R. S. C. c. 174, s. 183. Code, s. 711.

An assault with intent to commit an indictable offence is an attempt to commit an offence within the meaning of this section, and on an indictment for rape a conviction for an assault with intent to commit rape is valid. John v. R., 15 S. C. R. 384.

When an attempt to commit an offence is charged but the evidence establishes the commission of the full offence, the accused shall not be entitled to be acquitted, but the jury may convict him of the attempt, unless the court before which such trial is had thinks fit, in its discretion, to discharge the jury from giving any verdict upon such trial, and to direct such person to be indicted for the complete offence.

Provided that after a conviction for such attempt the accused shall not be liable to be tried again for the offence which he was charged with attempting to commit. R. S. C. c. 174, s. 184. Code, s. 712. See also indictable offences.

ATTEMPTS TO MURDER.

Every one is guilty of an indictable offence and liable to imprisonment for life, who does any of the following things with intent to commit murder; that is to say—

(*a*) administers any poison or other destructive thing to any person, or causes any such poison or destructive thing to be so administered or taken, or attempts to administer it, or attempts to cause it to be so administered or taken; or

(*b*) by any means whatever wounds or causes any grievous bodily harm to any person; or

(*c*) shoots at any person, or, by drawing a trigger or in any other manner, attempts to discharge at any person any kind of loaded arms; or

(*d*) attempts to drown, suffocate, or strangle any person; or

(*e*) destroys or damages any building by the explosion of any explosive substance; or

(*f*) sets fire to any ship or vessel or any part thereof, or any part of the tackle, apparel or furniture thereof, or to any goods or chattels being therein ; or

(*g*) casts away or destroys any vessel ; or

(*h*) by any other means attempts to commit murder. R. S. C. c. 162, s. 12. Code, s. 232.

B. drew a loaded pistol from his pocket for the purpose of murdering S., but before he had time to do anything further in pursuance of his purpose, the pistol was snatched out of his hand and he was at once arrested. It was held that this was not an attempt to murder. R. v. Brown, 10 Q. B. D. 381.

BANKS.

Under the 53 V. c. 31, s. 97, any officer of a bank wilfully giving any creditor thereof an undue or unfair preference over the other creditors is guilty of a misdemeanour, and by s. 99, the making of any wilfully false or deceptive statement in any account, statement, return, report or other document, respecting the affairs of the bank is, unless it amounts to a higher offence, a misdemeanour punishable by imprisonment for a term not exceeding five years. Under s. 100, it is an offence against the Act for any person to use the title of "bank," "banking company," "banking house," "banking association," or "banking institution," without being authorized so to do by the Act or by some other Act in force in that behalf.

Under the 319th section of the Code, it is an indictable offence for any cashier, assistant cashier, manager, officer, clerk or servant of any bank to steal any money or security for money, whether belonging to the bank or to any person lodging the same with the bank.

BARRATRY.

This is the offence of *frequently* inciting and stirring up suits and quarrels between Her Majesty's subjects, either at law or otherwise. The offence is a misdemeanour, punishable by fine and imprisonment. It is insufficient to prove a single act, inasmuch as

it is of the essence of the offence that the offender should be a *common* barrator.

BAWDY HOUSE.

A common bawdy house is a house, room, set of rooms, or place of any kind kept for purposes of prostitution. Code, s. 195.

Every one is guilty of an indictable offence and liable to one year's imprisonment who keeps any disorderly house, that is to say, any common bawdy-house, common gaming-house or common betting-house, as hereinbefore defined.

Any one who appears, acts, or behaves as master or mistress, or as the person having the care, government or management, of any disorderly house shall be deemed to be the keeper thereof, and shall be liable to be prosecuted and punished as such, although in fact he or she is not the real owner or keeper thereof. Code, s. 198. See as to houses of ill-fame, *ante* p. 123.

BETTING AND POOL-SELLING.

A common betting-house is a house, office, room or other place—

(*a*) opened, kept or used for the purpose of betting between persons resorting thereto and—

(i) the owner, occupier, or keeper thereof;

(ii) any person using the same;

(iii) any person procured or employed by, or acting for or on behalf of any such person;

(iv) any person having the care or management, or in any manner conducting the business thereof; or

(*b*) opened, kept or used for the purpose of any money or valuable thing being received by or on behalf of any such person as aforesaid, as or for the consideration,

(i) for any assurance or undertaking, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse-race or other race, fight, game or sport; or

(ii) for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency. Code, s. 197. As to search warrant in such cases, see Code, s. 575.

Every one is guilty of an indictable offence, and liable to one year's imprisonment, and to a fine not exceeding one thousand dollars, who—

(*a*) uses or knowingly allows any part of any premises under his control to be used for the purpose of recording or registering any bet or wager, or selling any pool; or

(*b*) keeps, exhibits, or employs, or knowingly allows to be kept, exhibited or employed, in any part of any premises under his control, any device or apparatus for the purpose of recording any bet or wager or selling any pool; or

(*c*) becomes the custodian or depositary of any money, property or valuable thing staked, wagered or pledged; or

(*d*) records or registers any bet or wager, or sells any pool, upon the result—

(i) of any political or municipal election;

(ii) of any race;

(iii) of any contest or trial of skill or endurance of man or beast.

The provisions of this section shall not extend to any person by reason of his becoming the custodian or depositary of any money, property or valuable thing staked, to be paid to the winner of any lawful race, sport, game, or exercise, or to the owner of any horse engaged in any lawful race, or to bets between individuals or made on the race course of an incorporated association during the actual progress of a race meeting. R. S. C. c. 159, s. 9. Code, s. 204.

Under s. 197 of the Code, it is not necessary that there should be evidence of such house, room or place having been opened and kept or used previously to the occasion in question.

The term place does not necessarily mean one particular spot but may include a place extending over a considerable area of ground such place need not be bounded by a definite line, but it cannot be of unlimited extent and it is to be confined to the area

occupied by the persons congregated together and resorting to it, and such place is further to be limited to a space upon which if any one carried on business there as a betting man, he might fairly and reasonably be said to be carrying on such business in the immediate presence of the persons resorting to such space. R. v. Preedy, 17 Cox, 433.

The English Act, relating to betting houses, uses the words "house, room, or other place." A tree in Hyde Park, to which a man used to resort to bet, was held not a "place" under the Act. Daggett v. Catterns, 12 Jur. N. S. 243. Under that Act the place must be one of which the defendant is or may be the owner or occupier, or of which he has the care or management. *Ib.* But a temporary wooden structure erected during races, was held to be within this Act. Shaw v. Morley, L. R. 3 Ex. 137; so a field is a place within this Act. Eastwood v. Miller, 30 L. T. N. S. 716: so is an umbrella on a race-course. Bowes v. Fenwick, L. R. 9 C. P. 339; Haigh v. Sheffield, L. R. 10 Q. B. 102.

The respondent the keeper of a beer house was charged under the Imperial Act, 16 & 17 V. c. 119, s. 3, with permitting the same to be used for the purpose of betting with persons resorting thereto. On five different days a bookmaker and his clerk were in the bar and tap room of the beer house, and used the bar and tap room for the purpose of betting, and did bet upon horse races with persons resorting thereto. The respondent was present and knew of and permitted such user. The bookmaker and clerk did not occupy any specific place in the bar or tap room and had no interest or property in the premises. It was held that the respondent had knowingly and wilfully permitted a room to be used for the purpose of betting with persons resorting thereto within the meaning of the statute and ought to be convicted. Hornsby v. Raggett, L. R. 1 Q. B. 20 (1892).

In R. v. Smiley, 22 O. R. 687, it was held that section 204 of the Code did not extend to 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, to take place out of Canada. See Macleod v. Attorney-General, 17 Cox, 341.

Where an information charged defendant with having on the 5th October, and on divers other days and times between the said 5th October, and the laying the information (16th November) kept a betting-house, a conviction for so using the house on the 8th November, was held good and valid and did not allege more than one offence. Onley v. Gee, 4 L. T. N. S. 338.

BIGAMY.

Bigamy is—

(*a*) the act of a person who, being married, goes through a form of marriage with any other person in any part of the world; or

(*b*) the act of a person who goes through a form of marriage in any part of the world with any person whom he or she knows to be married; or

(*c*) the act of a person who goes through a form of marriage with more than one person simultaneously or on the same day. R. S. C. c. 37, s. 10.

A "form of marriage" is any form either recognized as a valid form by the law of the place where it is gone through, or, though not so recognized, is such that a marriage celebrated there in that form is recognized as binding by the law of the place where the offender is tried. Every form shall for the purpose of this section be valid, notwithstanding any act or default of the person charged with bigamy, if it is otherwise a valid form. The fact that the parties would, if unmarried, have been incompetent to contract marriage shall be no defence upon a prosecution for bigamy.

No one commits bigamy by going through a form of marriage.

(*a*) if he or she in good faith and on reasonable grounds believes his wife or her husband to be dead: or

(*b*) if his wife or her husband has been continually absent for seven years then last past and he or she is not proved to have known that his wife or her husband was alive at any time during those seven years; or

(*c*) if he or she has been divorced from the bond of the first marriage; or

(*d*) if the former marrige has been declared void by a court of competent jurisdiction. R. S. C. c. 161, s. 4.

No person shall be liable to be convicted of bigamy in respect of having gone through a form of marriage in a place not in Canada, unless such person, being a British subject resident in Canada, leaves Canada with intent to go through such form of marriage. Code, s. 275.

The act uses the expression "form of marriage," because only one marriage is legal, and the former statute was inaccurate as a person married cannot marry again, he can only go through the ceremony.

The first marriage must be valid. If it is *void*, bigamy cannot be committed, otherwise if it is *voidable* only. R. v. Jacobs, 1 Mood. C. C. 140; see Breakey v. Breakey, 2 Q. B. (Ont.) 353. But it is not necessary that the second marriage should be valid and regular in all respects. R. v. Brawn, 1 C. & K. 144; R. v. Allen, L. R. 1 C. C. R. 367.

A *bona fide* belief by the prisoner, at the time of the second marriage, that her husband was then dead, was no defence, prior to the recent statute. R. v. Gibbons, 12 Cox, 237. But now under s-s 3 (*a*) of s. 275, it seems to be whether there is absence for seven years or not. See also R. v. Moore, 13 Cox, 544; R. v. Bennett, 14 Cox, 45; R. v. Horton, 11 Cox, 670.

If the Crown proves the second marriage of the prisoner while his first wife is living, the prisoner must prove the absence of the first wife during the seven years preceding the second marriage, and where such absence is not established, it is not incumbent on the prosecution to prove the prisoner's knowledge that the first wife was living at the time of the second marriage. R. v. D[illegible], 27 L. C. J. 201.

It has been held that where the prisoner relies on the first w[illegible]s lengthened absence, and his ignorance of her being alive, he must show enquiries made, and that he had reason to believe her dead, or at least could not ascertain where she was or that she was living,

more especially where he has deserted her, and this, notwithstanding that the first wife has married again. R. v. Smith, 14 Q. B. (Ont.) 565.

The law is different under s-s. 3 (*b*) s. 275. The seven years is now a defence in the absence of evidence showing knowledge that the husband or wife was alive when the form of marriage was gone through, and when there is continual absence for that time, the burden of proving that the prisoner knew that his wife was living within that time, is upon the prosecution. R. v. Curgerwen, L. R. 1 C. C. R. 1.

After the expiration of the seven years the prisoner cannot be convicted, unless the prosecution prove that within such seven years, the prisoner was aware of the existence of his first wife. If such evidence is not forthcoming, the prisoner may legally marry after the seven years have expired, though it is proved that his first wife is then living. See R. v. Lumley, L. R. 1 C. C. R. 198.

In a prosecution for bigamy where there is a foreign marriage, the foreign law must be strictly proved, and the marriage must be proved to be in accordance with that law. This is necessary, even where the justices, in their individual capacity, know that the marriage has been celebrated with the formalities required by the foreign law. R. v. Smith, 14 Q. B. (Ont.) 565. This, however, is not necessary if the marriage is admitted by the defendant, and there are corroborating circumstances strengthening the admission. The testimony of the officiating clergyman, that he had a marriage licence, which was brought to him by one of the parties, that he duly returned the same, that all the forms of law were observed as required by the license, and that the marriage was performed according to the rites and ceremonies of his church, is sufficient proof of the license having been issued and returned, and of the marriage having been duly solemnized. R. v. Allen, 2 Oldright, 373.

The Act is not *ultra vires* the Dominion Legislature, either as being repugnant to Imperial Legislation or on any other grounds.

In one case in order to prove the second marriage which took place in Michigan, in addition to the evidence of the girl herself,

the evidence of the officiating minister was tendered, who showed that during the last twenty-five years he had solemnized hundreds of marriages, that he was a clergyman of the Methodist Church, that he understood the laws of Michigan relating to marriage, that he had been all the while resident in Michigan, that he had had communications with the Secretary of State regarding these laws, and that this so-called second marriage was solemnized by him according to the marriage laws of that State. The evidence was held admissible in proof of the validity of the second marriage, and was sufficient proof of the same, even assuming that such ought not to have been presumed. R. v. Brierly, 14 O. R. 525.

Upon a charge of bigamy, the first marriage must be strictly proved as a marriage in law. Evidence of a confession of his first marriage made by the prisoner is not evidence on which he could be convicted. R. v. Ray, 20 O. R. 212.

In Quebec it has been held that the admission of the first marriage by the prisoner, unsupported by other testimony, is sufficient to justify a conviction for bigamy, so far as proof of the first marriage is concerned. R. v. Creamer, 10 L. C. R. 404.

The Code uses the expression "form of marriage," the meaning of which is defined by s-s. 2 of s. 275.

As to the marriage of British subjects outside of the United Kingdom, see Imp. Acts. 53 & 54 V. c. 47, and 54 & 55 V. c. 74.

Prior to the passing of "The Canada Evidence Act," 1893, 56 V. c. 31, s. 3, the first wife or husband was not a competent witness. See R. v. Madden, 14 Q. B. (Ont.) 588; R. v. Bienvenu, 15 L. C. J. 141.

But now, the husband or wife of a prisoner charged with bigamy is competent, and the rule always was that after proof of the first marriage the second wife might be a witness, for then it appeared that she was not the legal wife of the prisoner. R. v. Tubbee, 1 P. R. (Ont.) 98.

There must also be proof that the husband or wife was alive at the date of the second marriage. R. v. Lumley, L. R. 1 C. C. R. 196; R. v. Curgerwen, L. R. 1 C. C. R. 1.

It was proved that the prisoner and his wife were married in 1865, and that they lived together after marriage, but how long did not appear. There was no evidence of separation or when they last saw each other. In 1882, the prisoner married a second time, and was indicted for and convicted of bigamy. The conviction was held right, there being no evidence to displace the presumption, arising on this state of facts, that the first wife was living at the date of the second marriage. R. v. Jones, 15 Cox, 284.

Where the first marriage is contracted in Canada and the second in the United States, it is necessary to prove that the prisoner was, at the time of his second marriage, a subject of Her Majesty, resident in Canada, and that he left Canada with intent to commit the offence. R. v. Pierce, 13 O. R. 226; see s-s. 4 of s. 275 of the Code.

See as to feigned marriages s. 277 of the Code. As to polygamy, see Marriage.

BLASPHEMY.

The mere denial of the truth of the Christian religion is not enough to constitute the offence of blasphemy. There must be added a wilful intention to pervert, insult and mislead others by means of licentious and contumelious abuse applied to sacred subjects, or by wilful misrepresentation or artful sophistries, calculated to mislead the ignorant and unwary. R. v. Ramsay, 15 Cox, 231; see also R. v. Bradlaugh, *Ib.* 217.

As to blasphemous libel, see Code, s. 170.

BODILY HARM.

Section 241 and following sections of the Code relate to the infliction of bodily harm, and grievous and actual bodily harm under different circumstances. Section 252 declares that every one who by any unlawful act, or by doing negligently or omitting to do any act, which it is his duty to do, causes grievous bodily injury to any other person, is guilty of an indictable offence.

B., knowing that he had gonorrhœa, had connection with a girl without informing her of the fact, by means of which the disease

was communicated to her, and it was held that he might be convicted of inflicting actual bodily harm, it appearing that, though the girl consented, she was ignorant of B. having the disease, and would not have consented had she been aware of the fact. R. v. Sinclair, 13 Cox, 28.

The prisoner was the first or almost the first to leave the gallery of a theatre at the close of the performance. He ran down the stairs, wilfully put out the gas and placed an iron bar across the doorway. This caused a panic among the persons when leaving the gallery, and several of them were seriously injured through the pressure of the crowd, the court held that the prisoner was properly convicted under s. 242 of the Code. R. v. Martin, 8 Q. B. D. 54.

BRIBERY.

The R. S. C. c. 8, defines the persons who are guilty of bribery. Section 84 declares that giving money to procure votes (*b*), promising to procure employment (*c*), giving money to obtain the return of any person to serve in the House of Commons (*d*), procuring such return in consequence, or (*e*) advancing money to be used in bribery, are respectively misdemeanours. Section 85 makes certain acts of voters bribery and misdemeanours. To bribe or attempt to bribe any officer of customs is a misdemeanour. R. S. C. c. 32, s. 221.

Under s. 84, it is an offence to promise to pay a voter at an election his travelling expenses, conditionally on his coming and voting for a particular candidate, but a promise to pay a voter his travelling expenses without such a condition, is legal. Where a letter desired an elector to come from H. to C. to vote at the latter place for a particular candidate, a postscript to the letter said : "Your travelling expenses will be paid," it was held that this was evidence of bribery by the writer of the letter. Cooper v. Slade, 6 E. & B. 447.

It was agreed between three candidates and their supporters that there should be a test ballot to determine who should stand at the election. R., one of the three, was at the head of the ballot, and ultimately elected M. P., but it appeared that his agents had

given money to voters to vote for him at the test ballot without, however, making any stipulation as to their votes at the election. This was held to be bribery. Brett v. Robinson, L. R. 5 C. P. 503.

Under s. 89 the offence of personation is complete upon the personator tendering the voting paper, although on being asked if he be the person whose name is signed to the voting paper, he answers "No," and the vote is accordingly rejected. A conviction for such offence need not set out the facts constituting the offence. R. v. Hague. 9 Cox, 412.

BRIDGES

The Act respecting bridges, R. S. C. c. 93, imposes a penalty for opening a bridge without the notice required to be given to the Railway Committee of the Privy Council, or for opening contrary to an order of the Railway Committee, or for wilfully omitting to report an accident on, or to the bridge. *Ib.* ss. 18, 19 and 20.

BUCKET SHOPS.

See Gaming. Code, s. 201.

BUGGERY.

This offence is punishable with imprisonment for life, under s. 174 of the Code. An attempt to commit the offence is punishable with ten year's imprisonment. *Ib.* s. 175; see also s. 178.

BURGLARY.

Every one is guilty of the indictable offence called burglary, and liable to imprisonment for life, who—

(*a*) breaks and enters a dwelling-house by night with intent to commit any indictable offence therein; or

(*b*) breaks out of any dwelling-house by night, either after committing an indictable offence therein, or after having entered such dwelling-house, either by day or by night, with intent to commit an indictable offence therein. R. S. C. c. 164, s. 37. Code, s. 410.

The expression "night" or "night time" means the interval between nine o'clock in the afternoon and six o'clock in the forenoon of the following day, and the expression "day" or "day time" includes the interval between six o'clock in the forenoon and nine o'clock in the afternoon of the same day. Code, s. 3 (*q*).

In this part the following words are used in the following senses:

(*a*) "Dwelling-house" means a permanent building the whole or any part of which is kept by the owner or occupier for the residence therein of himself, his family or servants, or any of them, although it may at intervals be unoccupied;

(i) A building occupied with, and within the same curtilage with, any dwelling-house shall be deemed to be part of the said dwelling-house if there is between such building and dwelling-house a communication, either immediate or by means of a covered and inclosed passage, leading from the one to the other, but not otherwise;

(*b*) To "break" means to break any part, internal or external, of a building, or to open by any means whatever (including lifting, in the case of things kept in their places by their own weight), any door, window, shutter, cellar-flap or other thing intended to cover openings to the building, or to give passage from one part of it to another;

(i) An entrance into a building is made as soon as any part of the body of the person making the entrance, or any part of any instrument used by him, is within the building;

(ii) Every one who obtains entrance into any building by any threat or artifice used for that purpose, or by collusion with any person in the building, or who enters any chimney or other aperture of the building permanently left open for any necessary purpose, shall be deemed to have broken and entered that building. R. S. C. c. 164, s. 2. Code, s. 407. See also Code, ss. 408, 409, 411, 412 to 418 inclusive.

To constitute a dwelling-house within the law of burglary, the house must either be the place where one is in the habit of residing, or some building between which and the dwelling-house

there is a communication either immediate or by means of a covered and enclosed passage leading from one to the other, the two buildings being occupied in the same right. R. v. Jenkins, R. & R. 224. See s. 407 (*a*) (*i*) of the Code.

By s. 415 of the Code, entering any dwelling-house in the night with intent to commit an indictable offence therein is an indictable offence. And by the R. S. C. c. 174, s. 193, it was provided, that where a breaking and entering were proved to have been made in the day time, and no breaking out appeared to have been made in the night time, or when it was left doubtful whether such breaking and entering or breaking out took place in the day or night time, the prisoner might be acquitted of the burglary and convicted of breaking and entering the dwelling-house with intent to commit a felony. See now s. 713 of the Code.

Housebreaking differs from burglary, in this, that the former may be committed by *day*, the latter by *night*. This offence consists in breaking and entering any dwelling-house by day and committing any indictable offence therein, or breaking out of such house by day after committing any indictable offence therein. Code, s. 411.

Under s. 417 of the Code, it is an indictable offence to have in possession at night implements for the purpose of housebreaking, without lawful excuse. Where several persons are found out together by night for the common purpose of housebreaking, and one only is in possession of the housebreaking implements, all may be found guilty, for the possession of one is in such case the possession of all. R. v. Thompson, 11 Cox, 362. But proof of a general intent to break or enter any dwelling-house is insufficient. There must be proof of an intent to enter some particular building. R. v. Jarrald, 9 Cox, 307.

Larceny in a dwelling-house differs from housebreaking inasmuch as there need not be any breaking, nor any entry with a view to the commission of the larceny. The goods, however, must be under the protection of the house, and not in the personal care of the owner. If in such personal care, the prisoner would either be guilty of stealing from the person or robbery, if there were circum-

stances of violence, force, and putting in fear. In burglary, there need not be any actual larceny; it will suffice if there is an intent to commit an indictable offence.

But in relation to the duties of justices of the peace, no extended enquiry into the technicalities of the aforesaid offences is necessary. If the offence is not burglary, it may be housebreaking; if not the latter offence, it may be larceny in a dwelling-house; the various sections of the statute applying to almost all cases where either an indictable offence has been committed, or there is an intention to commit the same.

An attempt to commit a burglary may be established on proof of a breaking with intent to rob the house, although there be no proof of actual entry of any portion of prisoner's person. R. v. Spanner, 12 Cox, 155. See Code, s. 407 (*b*) (*i*).

Where a prisoner was indicted for breaking and entering a shop with intent to commit a felony, it was proved that he broke in the roof with intent to enter and steal, and was then disturbed; but there was no evidence that he ever entered the shop. It was held that he might be convicted of the misdemeanour of attempting to commit a felony. R. v. Bain, L. & C. 129. See Code, ss. 415, 711, 712.

An opening of a door in a shop under the same roof where the prisoner lived as a servant, for the purpose of committing an indictable offence, is a breaking and entering. R. v. Wenmouth, 8 Cox, 348.

See ss. 51 and 52 of the Code, as to defence of dwelling-house.

BY-LAWS.

In Ontario the 55 V. c. 42, authorizes municipalities to pass certain by-laws and by s. 289 a copy of any by-law, written or printed without erasure or interlineation and under the seal of the corporation, and certified to be a true copy by the clerk and any members of the council, shall be deemed authentic.

A by-law founded on an Act not then in force is invalid. Thus where a by-law was passed on the 27th of March to go into force on the 3rd of April following, in anticipation of an Act passed the

10th of March to go into operation the 2nd of April then next ensuing, a conviction on the by-law was quashed. R. v. Reed, 11 O. R. 242.

A conviction for an offence against a by-law must set out the by-law where the statute on which the by-law is framed merely gives power to pass by-laws, but does not make the particular Act, for which the conviction is an offence. Starr v. Heales, 4 Russ. & Geld. 84. In Ontario see 55 V. c. 42, s. 427.

A conviction was that the defendant did on the 16th May, 1886, create a disturbance on the public streets of the Village of L., by beating a drum, etc., contrary to a certain by-law of the village. The information was in like terms, except that the act was laid as done on Sunday. The by-law was passed under the R. S. O. c. 184, s. 489, s-s. 46, whereby power was given to pass by-laws "for regulating or preventing the ringing of bells, blowing of horns, shouting and other unusual noise or noises calculated to disturb the inhabitants." The by-law was "the firing of guns, blowing of horns, beating of drums and other unusual or tumultuous noises in the public streets of L., on the Sabbath day, are strictly prohibited." The only evidence was that given by a person who said he "saw" the defendant "playing the drum on the streets of L," on the day in question. It was held that the conviction was bad in not alleging that the beating of the drum was without any just or lawful excuse. R. v. Martin, 12 O. R. 800. See now 55 V. c. 42, s. 489, s-s. 46 and 46 (*a*); also R. v. Reeves, 1 O. R. 490; R. v. Coutts, 5 O. R. 644.

A by-law of a county municipality passed under the 55 V. c. 42, s. 495, s-s. 2, enacted it should not be lawful for any person or persons to act as auctioneers, or to sell or put up to sale any goods, etc., by public auction unless duly licensed. It was held that an agent of an assignee of an insolvent estate selling without a license the stock in trade of an insolvent who had carried on business in the county, was rightly convicted of a breach of the by-law although it was the only occasion he had so acted in the municipality. R. v. Rawson, 22 O. R. 467.

A by-law of Toronto prohibited any person licensed thereunder soliciting any person to take or use his express waggon or employ-

ing 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 union station 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, and the court held that there was no breach of the by-law but merely the carrying out of the defendant's agreement with the railway company, and further that the railroad train did not come within any of the places mentioned in the by-law. R. v. Verral, 18 O. R. 117.

The defendant was convicted of a breach of a by-law passed under the 55 V. c. 42, s. 436, which provided that no person should after the passing thereof, without a license therefor, "keep or use for hire any carriage, truck, cart, etc." 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 and which were so being used on the day complained of, it was held that the defendant came within the terms of the by-law and was properly convicted of keeping or using for hire, etc. R. v. Boyd, 18 O. R. 485.

A by-law of the city of Frederickton prohibited persons from "clambering over or stepping over or standing upon the seats" in the city hall. A conviction for "clambering over and stepping on" the seats is not sustained by evidence, that the defendant being seated in the hall, stepped over the back of the seat in front of him and upon that seat, but did not remain standing there. Stepping over a seat is not "clambering over," nor does the mere stepping on a seat while in the act of moving from one seat to another come

within the words of a by-law "standing on a seat." Moore v. Sharkey, 26 S. C. N. B. 7.

Section 436 of the 55 V. c. 42, empowers the police commissioners of a city to regulate and license the owners of omnibuses. But the authority is to license owners not drivers, and therefore a conviction of a driver on a by-law, that no person should drive or own any omnibus without being licensed was quashed. R. v. Butler, 22 O. R. 462.

A by-law is bad which discriminates in favour of one class of citizens over another. R. v. Pipe, 1 O. R. 43.

A by-law passed under s. 2, s-s. 2 of the (Ont.) 51 V. c. 33, provided that all shops where goods were exposed or offered for sale by retail in the town, should be closed at 7 p. m. on each day of the week excepting saturday, and also that it should not be deemed an infraction of the by-law for any shop-keeper or dealer to supply any article after 7 p. m. to mariners, owners or others of steamboats or vessels calling or staying at the place where the by-law was in force. The by-law was held illegal, in discriminating between different classes of buyers and different classes of tradesmen and was in contravention of s-s. 9 of s. 2 of the Act. A conviction thereunder was therefore quashed. R. v. Flory, 17 O. R. 715.

This Act was amended by the 52 V. c. 44, s. 4.

On the trial of a charge of being a transient trader without a license contrary to a municipal by-law, it was held that a copy of the by-law certified by the clerk to be a true copy and under the corporate seal as required by s. 289 of the 55 V. c. 42 must be produced and put in evidence. It will not be sufficient that a by-law stated by the solicitor for the complainant to be the original by-law is produced and portions of it read to the defendant in court. And when nothing more than this is done the conviction will be quashed. R. v. Dowslay, 19 O. R. 622.

CANADA TEMPERANCE ACT.

(*See* SCOTT ACT.)

CANNED GOODS.

The R. S. C. c. 105, s. 2, provides that every package of canned goods sold or offered for sale in Canada for consumption therein, shall have attached thereto or imprinted thereon, a label or stamp setting forth in legible characters the name and address of the person, firm or company by whom the same was packed, or of the dealer who sells the same or offers it for sale, and a contravention of the Act renders the party liable on summary conviction to a penalty of two dollars for each such package and for a subsequent offence a penalty not exceeding twenty dollars, and not less than four dollars for each package, in respect of which any such provision has been violated.

CHAMPERTY.

(*See* MAINTENANCE.)

CHEATS AND FRAUDS.

If a person puts a false mark or token upon an article, as upon a picture, the name of a well-known painter, and sells the article by means of that false token, his offence amounts to a cheat at Common Law. R. v. Closs, 3 Jur. N. S. 1309.

The 395th section of the Code provides that every one is guilty of an indictable offence and liable to three years' imprisonment who with intent to defraud any person, cheats in playing at any game, or in holding the stakes, or in betting on any event.

The defendant was convicted by the police magistrate, of the city of Toronto, for playing at a game of cards called "pharaoh," contrary to the statute 12 Geo. II. c. 28, and sentenced to pay £50, sterling—the penalty thereby imposed. It was 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 penalty was to be by civil action. R. v. Matheson, 4 O. R. 559.

CHILD ABANDONING.

Every one is guilty of an indictable offence and liable to three years' imprisonment who unlawfully abandons or exposes any

child under the age of two years, whereby its life is endangered, or its health is permanently injured.

The words "abandon" and "expose" include a wilful omission to take charge of the child on the part of a person legally bound to do so, and any mode of dealing with it calculated to leave it exposed to risk without protection. R. S. C. c. 162, s. 20. Code, s. 216.

There cannot be an unlawful abandonment of a child under this section, except by a person on whom the law casts the obligation of maintaining and protecting the child, and makes this a duty. A person who has the lawful custody and possession of the child, or the father who is legally bound to provide for it (see ss. 210-217 of the Code), may offend against the provisions of the statute. But strangers to the child, under no obligation to provide for it, do not come within the statute. R. v. White, L. R. 1 C. C. R. 311. If the abandonment, instead of merely injuring the health of the child, causes its death, the prisoner would it seems, be guilty of murder or manslaughter, according to the circumstances. *Ib.* 314. Though a father has not the actual custody of his child, yet, as he is legally bound to provide for it, his abandonment and exposure of it brings him within the statute. *Ib.* 311.

So the mother of a child, who has the actual custody of it, may come within the Act. The mother of a child, five weeks of age, packed it up in a hamper as a parcel, and sent it by railway, addressed to the place where its putative father was then living, giving directions to the clerk at the station to be very careful of the hamper and send it by the next train, but saying nothing as to its contents. The child reached its destination in safety, but it was held that the mother had unlawfully abandoned and exposed the child. R. v. Falkingham, L. R. 1 C. C. R. 222.

To create this offence at common law the abandonment must cause an injury to the health of the child. R. v. Philpot, 1 Dears. 179. As to concealing the birth of a child, see ss. 240 and 714 of the Code, also *post* Concealing the Birth of a Child.

CHILD, NEGLECTING TO MAINTAIN.

Every one who as parent, guardian or head of a family is under a legal duty to provide necessaries for any child under the age of sixteen years is criminally responsible for omitting, without lawful excuse, to do so while such child remains a member of his or her household, whether such child is helpless or not, if the death of such child is caused, or if his life is endangered or his health is or is likely to be permanently injured, by such omission. Code, s. 210.

It would seem that under this section, there can be no conviction unless the parent has the means to provide for the child. R. v. Rugg, 12 Cox, 16.

A parent who wilfully withholds necessary food from his child, with the wilful determination by such withholding to cause the death of the child is guilty of murder if the child dies. A parent who has the means to supply necessaries but who negligently though not wilfully withholds from a child food which if administered would sustain its life, and the child consequently dies, is guilty of manslaughter. R. v. Coude, 10 Cox, 547.

Every woman is guilty of an indictable offence who, with either of the intents hereinafter mentioned, being with child and being about to be delivered, neglects to provide reasonable assistance in her delivery, if the child is permanently injured thereby, or dies, either just before, or during, or shortly after birth, unless she proves that such death or permanent injury was not caused by such neglect, or by any wrongful act to which she was a party, and is liable to the following punishment:—

(*a*) If the intent of such neglect be that the child shall not live, to imprisonment for life.

(*b*) If the intent of such neglect be to conceal the fact of her having had a child, to imprisonment for seven years. Code, s. 239.

The Legislature of Ontario has passed an Act, 56 V. c. 45, for the prevention of cruelty to and better protection of children. Section 2 provides that any person over sixteen years of age who,

having the care, custody, control or charge of a child, being a boy under the age of fourteen years, or being a girl under the age of sixteen years, wilfully illtreats, neglects, abandons or exposes such child, or causes or procures such child to be illtreated, neglected, abandoned or exposed in a manner likely to cause such child unnecessary suffering or serious injury to its health, shall be guilty of an offence under this Act, and on conviction thereof, by a court of summary jurisdiction, shall be liable, at the discretion of the court, to a fine not exceeding one hundred dollars, or alternatively or in default of payment of such fine, or in addition thereto to imprisonment, with or without hard labour, for any term not exceeding three months. Under section 3 there is an increased penalty on proof of interest in the death of the child, and under section 4, a penalty is imposed on any person causing children to beg or sing on the streets.

CHILD STEALING.

Every one is guilty of an indictable offence and liable to seven years' imprisonment who, with intent to deprive any parent or guardian, or other person having the lawful charge, of any child under the age of fourteen years, of the possession of such child, or with intent to steal any article about or on the person of such child, unlawfully—

(*a*) Takes or entices away or detains any such child; or

(*b*) Receives or harbours any such child knowing it to have been dealt with as aforesaid.

Nothing in this section shall extend to any one who gets possession of any child, claiming in good faith a right to the possession of the child. R. S. C. c. 162, s. 45; Code, s. 28.

See R. v. Barrett, 15 Cox, 658.

There may be a conviction under this section where the child has been in the service of the prisoner, and is unlawfully detained by fraud. R. v. Johnson, 15 Cox, 481.

CHINESE IMMIGRATION.

The R. S. C. c. 67, restricts the immigration of Chinese to Canada, and requires the payment of fifty dollars duty on each

arrival. To wilfully evade or attempt to evade any provision of the Act, as respects the payment of duty is a misdemeanour. *Ib.* s. 17; and to take part in organizing any court or tribunal composed of Chinese persons, *Ib.* s. 18, or to molest, persecute or hinder any officer or person carrying out the Act is a misdemeanour. *Ib.* s. 19. See 55 & 56 V. c. 25.

CHURCHES.

Section 171 of the Code makes it an indictable offence for any person by threats or force to unlawfully obstruct or prevent any clergyman from performing his duties; and under section 173, it is an offence to wilfully disturb, interrupt or disquiet any assemblage of persons met for religious worship.

This statute would only protect the clergyman when engaged in the performance of the acts therein mentioned, and not when performing other duties, such as collecting alms. Cope v. Barber, L. R. 7 C. P. 393.

Where several persons are prosecuted, tried, and convicted together of an offence against s. 173 of the Code, there should be only one conviction drawn up, and not a separate conviction for each person offending, but the conviction of each person separately is no doubt correct. The offence is in its nature the act of each, and all may not necessarily be equally guilty. Parson q. t. v. Crabbe, 31 C. P. (Ont.) 151. See also s. 172 of the Code.

COCKFIGHTING.

(*See* CRUELTY TO ANIMALS.)

COINAGE OFFENCES.

The R. S. C. c. 167, ss. 26 and 29 to 34, with ss. 460 to 479 of the Code, now govern offences relating to the coin.

The mere possession of a large quantity of pieces of counterfeit coin of the same date and make, each being wrapped up in a separate piece of paper, affords evidence of a guilty knowledge and of an intention to utter under the 471st section. R. v. Jarvis, 7 Cox, 53.

Under the 478th section the prisoner cannot be convicted without proof of the previous conviction. See R. v. Thomas, L. R. 2 C. C. R. 41.

It is a misdemeanour at common law to make or procure engraved dies with intent therewith to make a foreign coin, even though all the instruments necessary had not been obtained. R. v. Roberts, 7 Cox, 39. But the possession of a mould for coining the obverse side of a half crown with other coining materials was deemed sufficient evidence to go to a jury on a charge of felony. R. v. Weeks, 8 Cox, 455.

A galvanic battery is a machine within the 466th section. R. v. Glover, 9 Cox, 282.

The prisoner was convicted of uttering two false and counterfeit sovereigns with guilty knowledge. The two sovereigns were originally genuine, but had been reduced in weight by filing off nearly all the original milling. New millings were then made to them fraudulently, so as to make them resemble genuine sovereigns. It was held that the two sovereigns, when passed in that state, were false and counterfeit coins. R. v. Hermann, 14 Cox, 279.

Under the 466th section, an information should allege possession without lawful authority or excuse, but a charge of possession without lawful excuse is sufficient, as excuse includes authority. The words "the proof whereof shall lie on the accused," only shift the burden of proof, and do not alter the character of the offence. R. v. Harvey, 11 Cox, 662.

As to the evidence necessary to prove that coin is false or counterfeit, see s. 692 of the Code.

Under s. 718 no difference in the date or year or in any legend marked upon the lawful coin described in the indictment, and the date or year or legend marked upon the false coin, shall upon the trial of any person accused of any offence respecting the currency or coin be considered a just or lawful excuse or acquitting any such person of such offence.

Section 721 of the Code provides for the destruction of any false or counterfeit coin produced on the trial.

COUNTERFEIT MONEY.

Offences in relation to this are now governed by ss. 479 and 480 of the Code. Under 480 (*b*), 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 bank notes unsigned, though he believed them to be counterfeit and offered to purchase under such belief. R. v. Attwood, 20 O. R. 574.

COMMON PURPOSE.

The principle of law is, that a person doing an unlawful act is liable for all the consequences thereof, though they may be more serious than he intended. And if A., intending to murder B., shoots at and wounds C. supposing him to be B. he is guilty of wounding C. with intent to murder him, for he intends to kill the person at whom he shoots. R. v. Smith, 7 Cox, 51.

If A. and B. agree together to assault C. with their fists, and C. receives a chance blow of the fists from either of them, both A. and B. are guilty of manslaughter. But should A. of his own impulse, kill C. with a weapon suddenly caught up, B. would not be responsible for the death, he being only liable for acts done in pursuance of the common design of himself and A. R. v. Caton, 12 Cox, 624.

Where two persons go out with the common object of robbing a third person, and one of them, in pursuit of that object, does an act which causes the death of that third person under such circumstances as to be murder in him who does the act, it is murder in the other also. R. v. Jackson, 7 Cox, 357. See *ante*, p. 336.

Section 61, s-s. 2 of the Code, provides as follows:

If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was, or ought to have been known to be a probable consequence of the prosecution of such common purpose.

COMPOUNDING OFFENCES.

Every one is guilty of an indictable offence and liable to a fine not exceeding the penalty compounded for, who, having brought, or under colour of bringing, an action against any person under any penal statute in order to obtain from him any penalty, compounds the said action without order or consent of the court, whether any offence has in fact been committed or not. R. S. C. c. 173, s. 31. Code, s. 155.

Merely to forbear to prosecute is no offence. There is wanting something else to constitute a crime, and this essential is the taking of some reward or advantage. See however as to treason, Code s. 67 (*b*). But forbearing to prosecute a criminal on account of some reward received is an offence. To corruptly take any reward for helping a person to property, stolen or obtained, etc., by any indictable offence (unless all due diligence to bring the offender to trial has been used) is an indictable offence. Code, s. 156. So an advertisement offering a reward for the return of stolen or lost property, using words purporting that no questions will be asked, or seizure or inquiry made after the person producing the property, or that return will be made to any pawnbroker or other person who has bought or made advances on such property, renders the advertiser, printer and publisher, liable to forfeit two hundred and fifty dollars. *Ib.* s. 157. But the printer or publisher of such advertisement must be prosecuted within six months. Code, s. 551, s-s. (*d*) (iv).

Compounding an offence is the taking of some reward for forbearing to prosecute, or making some bargain by which something is to be done for not prosecuting, the staying of such prosecution being the subject, or the principal, or special subject of the arrangement. It is of no consequence whether a charge has been formally prepared before a magistrate or not. It is equally an offence to compound in such a case after an information has been laid. Topence v. Martin, 38 Q. B. (Ont.) 411.

An advance of money for the purpose of taking up a forged promissory note is not compounding an indictable offence. *Ex parte* Butt, 13 Cox, 374.

The offence of compounding is complete at the time when the agreement to abstain from prosecuting is made, and it is not necessary to shew that the prisoner did abstain from prosecuting, and that by reason of such abstention the thief escaped prosecution. Any person having knowledge that an indictable offence has been committed, and entering into an agreement to abstain from prosecuting, or to hinder the ends of justice, is guilty of the offence, and the offence is not confined to the owners of stolen property entering into such agreement. R. v. Burgess, 15 Cox, 779; 16 Q. B. D. 141.

Under s. 377 of the Code an owner or consignor of goods, who after receiving an advance thereon from the consignee with intent to deceive, defraud or injure such consignee, makes any disposition of the same different from and inconsistent with the agreement between him and the consignee, is guilty of an indictable offence, but he is not subject to prosecution if before making such disposition he pays or tenders to the consignee the full amount of any advance made thereon.

Compounding a prosecution for selling liquor without license would not render a party liable under the statute, and it would seem that in all offences which involve damages to an injured party for which he may maintain an action, it is competent for him notwithstanding they are also of a public nature, to compromise or settle his private damage in any way he may think fit. Keir v. Leeman, 9 Q. B. 371-394. As to the offence of compounding misdemeanours see Dwight v. Ellsworth, 9 Q. B. (Ont.) 540.

In general a prosecution can only be compromised by leave of the court. A prosecution for selling liquor without license cannot be compromised without leave of the court. *Re* Fraser, 1 U. C. L. J. N. S. 326.

The statute 18 Eliz. c. 5, contains provisions against compounding informations on penal statutes. But this statute does not extend to penalties which are only recoverable by information before justices. R. v. Mason, 17 C. P. (Ont.) 534.

COMPULSION.

If a person committing a crime is not a free agent, and is subject to actual force at the time it is committed, he is excused; as

if the person who does it is compelled by threats, by a superior force, instantly to kill him or to do him grievous bodily harm if he refuses; but threats of future injury, or the command of any one not the husband of the offender, do not excuse any offence. So necessity may, in some cases excuse, for instance A. and B., swimming in the sea, after a shipwreck, get hold of a plank not large enough to support both, A. pushes B. off, who is drowned. This is not a crime. Stephen's Dig. 21-2.

Except as hereinafter provided, compulsion by threats of immediate death or grievous bodily harm from a person actually present at the commission of the offence shall be an excuse for the commission, by a person subject to such threats, and who believes such threats will be executed, and who is not a party to any association or conspiracy the being a party to which rendered him subject to compulsion, of any offence other than treason as defined in paragraphs *a*, *b*, *c*, *d* and *e* of s-s. 1 of s. 65 of the Code, murder, piracy, offences deemed to be piracy, attempting to murder, assisting in rape, forcible abduction, robbery, causing grievous bodily harm, and arson. Code, s. 12.

No presumption shall be made that a married woman committing an offence does so under compulsion because she commits it in the presence of her husband. Code, s. 13.

CONCEALED WEAPONS.

(*See* FIREARMS.)

CONCEALING THE BIRTH OF A CHILD.

Every one is guilty of an indictable offence, and liable to two years' imprisonment, who disposes of the dead body of any child in any manner, with intent to conceal the fact that its mother was delivered of it, whether the child died before, or during, or after birth. R. S. C. c. 162, s. 49. Code, s. 240.

If any person tried for the murder of any child is acquitted thereof the jury by whose verdict such person is acquitted may find, in case it so appears in evidence, that the child had recently been born, and that such person did, by some secret disposition of such child or of the dead body of such child, endeavour to conceal

the birth thereof, and thereupon the court may pass such sentence as if such person had been convicted upon an indictment for the concealment of birth. R. S. C. c. 174, s. 188. Code, s. 714.

The denial of the birth only is not sufficient. There must be some act of disposal of the body after the child is dead. R. v. Turner, 8 C. & P. 755.

Although a child be laid in such a position that it does not necessarily follow that concealment was intended, yet if the jury find that such was the intention of the mother, it would seem that the offence is complete. R. v. Perry, 1 Pears & Dearsly 471. Where it appeared that the body of the child was found three days after it was born, behind the door of the privy belonging to the house where she lived as a domestic servant, the body being in a tub covered with a small cloth, it was held that there was no conclusive evidence to warrant the jury in finding a verdict for concealment of birth. R. v. Opie, 8 Cox, 332. Still in such a case as this a justice should commit the prisoner for trial.

In order to convict a woman of endeavouring to conceal the birth of her child, a dead body must be found, and identified as that of the child of which she is alleged to have been delivered. R. v. Williams, 11 Cox, 684.

The statute applies to persons other than the mother, as well as the mother herself.

The expression in the statute "any child of which any woman is delivered," does not include delivery of a fœtus, which has not reached the period at which it might have been born alive. R. v. Berriman, 6 Cox, 388; see R. v. Colmer, 9 Cox, 506. See Code, s. 219.

"Secret disposition" must depend upon the circumstances of each particular case, and the most complete exposure of the body might be a concealment, as for instance, if the body were placed in the middle of a moor in the winter, or on the top of a mountain, or in any other secluded place where it would not likely be found. R. v. Brown, L. R. 1 C. C. R. 244. But there is no doubt there must be some disposition of the body, which under the circumstances is likely to prevent its being found.

Leaving the dead body of a child in two boxes, closed and not locked or fastened, one being placed inside the other, in a bedroom, but in such a position as to attract the attention of those who daily resorted to the room, is not a "secret disposition of the body" within the statute. R. v. George, 11 Cox, 41.

To come within the meaning of the term "secret disposition," there must be a putting the child into some place where it is not likely to be found. R. v. Sleep, 9 Cox, 559.

The section only applies to the concealment of the dead body of the child, and a woman who endeavours to conceal the birth of a child by depositing it, while alive, in the corner of a field, and leaving it to die there, cannot be convicted of concealing the birth. R. v. May, 10 Cox, 448.

CONSPIRACY.

As to conspiracy to commit treasonable offences, see s. 69 of the Code; and as to a seditious conspiracy, s. 123 (4) and s. 124.

Under section 152, every one is guilty of an indictable offence who conspires to prosecute any person for any alleged offence knowing such person to be innocent thereof. So it is an indictable offence to conspire with any other person by false pretenses or false representations or other fraudulent means, to induce any woman to commit adultery or fornication. Code, s. 188.

Every one is guilty of an indictable offence and liable to seven years' imprisonment who conspires with any other person, by deceit or falsehood or other fraudulent means, to defraud the public or any person, ascertained or unascertained, or to affect the public market price of stocks, shares, merchandise or anything else publicly sold, whether such deceit or falsehood or other fraudulent means would or would not amount to a false pretense as hereinbefore defined. Code. s. 394.

A conspiracy in restraint of trade is an agreement between two or more persons to do or procure to be done any unlawful act in restraint of trade. Code, s. 516.

No prosecution shall be maintainable against any person for conspiracy in refusing to work with or for any employer or work-

man, or for doing any act or causing any act to be done for the purpose of a trade combination, unless such act is an offence punishable by statute. 53 V. c. 37, s. 19; Code, s. 518.

Every one is guilty of an indictable offence and liable to a penalty not exceeding four thousand dollars and not less than two hundred dollars, or to two years' imprisonment, and if a corporation is liable to a penalty not exceeding ten thousand dollars and not less than one thousand dollars, who conspires, combines, agrees or arranges with any other person, or with any railway, steamship, steamboat or transportation company, unlawfully—

(*a*) to unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity which may be a subject of trade or commerce; or

(*b*) to restrain or injure trade or commerce in relation to any such article or commodity; or

(*c*) to unduly prevent, limit, or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or

(*d*) to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity, or in the price of insurance upon person or property. 52 V. c. 41, s. 1; Code, s. 520.

Every one is guilty of an indictable offence and liable to two years' imprisonment who, in pursuance of any unlawful combination or conspiracy to raise the rate of wages, or of any unlawful combination or conspiracy respecting any trade, business or manufacture, or respecting any person concerned or employed therein, unlawfully assaults any person, or, in pursuance of any such combination or conspiracy, uses any violence or threat of violence to any person, with a view to hinder him from working or being employed at such trade, business or manufacture. R. S. C. c. 173, s. 9; Code, s. 524.

Every one is guilty of an indictable offence and liable to seven years' imprisonment who, in any case not hereinbefore provided for, conspires with any person to commit any indictable offence. Code, s. 527.

Conspiracy is an agreement by two persons or more to do, or cause to be done, an unlawful act, or to prevent the doing of an act ordained under legal sanction by any means whatever, or to do or cause to be done an act whether lawful or not, by means prohibited by penal law. R. v. Roy, 11 L. C. J. 93.

The offence is divisible into three heads: 1. Where the end to be attained is in itself a crime. 2. Where the object is lawful, but the means to be resorted to are unlawful. 3. Where the object is to do an injury to a third party or a class, though if the wrong were inflicted by a single individual it would be a wrong and not a crime. R. v. Parnell, 14 Cox, 508.

A conspiracy cannot exist without the consent of two or more persons. Mulcahy v. R., L. R. 3 E. & I. App. 306; and therefore a man and his wife cannot be indicted for conspiring alone, because they constitute one person in law. Arch. Cr. Pldg. 942.

If two persons are charged with conspiracy one cannot be acquitted and the other convicted, because there must be two persons concerned to constitute the crime, but if more than two are charged all might be acquitted except two, or all or any number beyond two may be convicted. Persons who are not before the court cannot, of course, be convicted, but prisoners on trial may be convicted of conspiring with others not on trial. R. v. Bunn, 12 Cox, 339.

The offence of conspiracy is complete as soon as there is an agreement to do a thing which would be if done, though not a crime, such a matter as would bring the agreement to do it within the definition of conspiracy. Heymann v. R., 12 Cox, 383; L. R. 8 Q. B. 102.

The gist of the offence is the combination, therefore the parties will be liable, though the conspiracy has not been actually carried into execution. Horsman v. R., 16 Q. B. (Ont.) 543. But the combination must be something more than intention merely. See Mulcahy v. R., L. R. 3 E. & I. App. 306, 317, 328.

It is not necessary that the object should be unlawful, for when two or more persons fraudulently combine, the agreement may be criminal, although if the agreement were carried out no crime

would be committed, but a civil wrong only inflicted on the party. R. v. Warburton, L. R. 1 C. C. R. 276.

If persons agree together to do some unlawful thing and proceed to do it, they are guilty of a conspiracy; or if they agree to do a lawful thing by unlawful means, and proceed to carry out their agreement by those means, they are guilty of a conspiracy.

An indictment for a conspiracy at common law will lie against two or more persons for conspiring to commit an offence, for which special provision is made by statute, and it cannot be contended that the statute having defined only certain acts as illegal has virtually declared all other acts not to be punishable. R. v. Bunn, 12 Cox, 316.

A money lender and his attorney will be guilty of conspiracy if they combine to enforce by legal process payment of sums they know not to be due, and falsely represent them to be due in order to obtain payment. R. v. Taylor, 15 Cox, 265.

A conspiracy to bring about a change in the government of the province of Ontario, by bribing members of the legislature to vote against the government, is an indictable offence. A conspiracy to bribe members of parliament is a misdemeanour at common law, and as such is indictable. The jurisdiction given to the legislature of the province of Ontario by the R. S. c. 11, ss. 48, 49, 50 and 51, to punish as for contempt, does not oust the jurisdiction of the court where the offence is of a criminal nature, and the same Act may be in one aspect a contempt of the legislature, and in another aspect a misdemeanour. R. v. Bunting, 7 O. R. 524.

Under s. 70 of the Code, a conspiracy with any person to do any act of violence in order to intimidate any legislative body is an indictable offence.

Under s. 234 of the Code, a conspiracy to commit murder is an indictable offence.

The directors of a joint stock bank, knowing it to be in a state of insolvency, issued a balance sheet showing a profit, and thereupon declared a dividend of six per cent. They also issued advertisements inviting the public to take shares upon the faith of these

representations of the flourishing condition of the bank. They were held guilty of a conspiracy to defraud. R. v. Brown, 7 Cox, 442.

It is an indictable offence where parties, by false pretences and fraudulent representations and lies, enter into a conspiracy together, by those means to raise the price of any vendible commodity. R. v. Berenger, 3 M. & S. 67. See Code, s. 520. And where the object of the conspiracy was not merely to obtain a settling day and official quotation upon stock exchange of the stock of a certain company, and so induce persons to believe that the company was duly formed and constituted, but also to induce persons to act on that belief and deal in the shares of the company, it was held indictable. R. v. Aspinall, L. R. 1 Q. B. D. 730. Affirmed in appeal, L. R. 2 Q. B. D. 48.

Where several persons are proved to have combined together for the same illegal purpose any act done by one of the party in pursuance of the original concerted plan, and with reference to the common object is in contemplation of law, the act of the whole party, and therefore the proof of such act would be evidence against any of the others who are engaged in the same conspiracy, and any declarations made by one of the party at the time of doing such illegal act seem not only to be evidence against himself as tending to determine the quality of the act, but to be evidence also against the rest of the party who are as much responsible as if they had themselves done it. But proof of concert and connection must be given before evidence is admissible of the acts or declarations of any person not in the presence of the prisoner. Therefore on a trial for conspiracy to defraud by means of the fraudulent and collusive transfer of a pretended promissory note and the institution, maintenance and prosecution in the civil courts of an oppressive, unfounded, false and malicious suit at law based on said note, a deposition made in such civil suit by the plaintiff therein, one of the accused may be received in evidence against himself and co-defendant on the charge of conspiracy. R. v. Murphy, 17 Q. L. R. 305. See also, R. v. McGreevy, 17 Q. L. R. 196.

CONTRACT.

Section 521 of the Code renders criminal certain breaches of contract which endanger life or property, and by s. 133 it is an indictable offence, to make any offer, promise, gift or loan to any government employee with intent to secure the influence of such employee in obtaining a contract with the government or the payment of the consideration moneys therefor.

CONTAGIOUS DISEASES AFFECTING ANIMALS.

The R. S. C. c. 69, provides that every owner or breeder of cattle, and every one bringing foreign animals into Canada shall, on perceiving the appearance of infectious or contagious disease, give immediate notice to the Minister of Agriculture, and a malicious and fraudulent concealment entails a penalty not exceeding two thousand dollars. Various other provisions are made, and penalties imposed with the view of preventing the spread of infectious or contagious diseases, and every penalty imposed by the Act is recoverable with costs before any two justices of the peace, or any magistrate having the powers of two justices of the peace under the Summary Convictions Act. *Ib.* s. 46.

CONVICTIONS, RETURN OF.

(*See ante*, p. 252).

COPYRIGHT.

The R. S. C. c. 62, is the Act respecting Copyright. Under s. 31 of this Act photograph copies of engravings from pictures are equivalent to copies from the picture itself, and though a number of copies are sold together, the sale of each copy is a separate offence. *Ex parte* Beal, L. R. 3 Q. B. 387; see also Graves v. Ashford, L. R. 2 C. P. 410; Bradbury v. Hotten, L. R. 8 Ex. 1.

Under s. 29, every person who fraudulently assumes authority to act as agent of the author, or of his legal representative for the registration of a temporary copyright, an interim copyright, or a copyright is guilty of a misdemeanour. The penalty for falsely pretending to have copyright is three hundred dollars. *Ib.* s. 33.

And under s. 28 if any person wilfully makes or causes to be made any false entry in the register books of the Minister of Agriculture, or wilfully produces or causes to be tendered in evidence any paper falsely purporting to be a copy of an entry in the said books he is guilty of a misdemeanour.

The Act was amended by the 52 V. c. 29, and the 53 V. c. 12.

CREDITOR, DEFRAUDING.

Every one is guilty of an indictable offence and liable to a fine of eight hundred dollars and to one year's imprisonment who—

(*a*) With intent to defraud his creditors, or any of them,

(i) Makes, or causes to be made, any gift, conveyance, assignment, sale, transfer or delivery of his property;

(ii) Removes, conceals or disposes of any of his property; or

(*b*) With the intent that any one shall so defraud his creditors, or any one of them, receives any such property. R. S. C. c. 173, s. 28; Code, s. 368.

It is not essential under this section that the debt of the creditor should be actually due at the time of the fraudulent conveyance. R. v. Henry, 21 O. R. 113.

CRIMINAL BREACHES OF CONTRACT.

(*See ante*, p. 392; *see* ALSO MASTER AND SERVANT.)

CRUELTY TO ANIMALS.

Every one is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding fifty dollars, or to three months' imprisonment, with or without hard labour, or to both, who—

(*a*) Wantonly, cruelly or unnecessarily beats, binds, illtreats, abuses, overdrives or tortures any cattle, poultry, dog, domestic animal or bird; or

(*b*) While driving any cattle or other animal is, by negligence or ill-usage in the driving thereof, the means whereby any

mischief, damage or injury is done by any such cattle or other animal; or

(*c*) In any manner encourages, aids or assists at the fighting or baiting of any bull, bear, badger, dog, cock, or other kind of animal, whether of domestic or wild nature. R. S. C. c. 172, s. 2. Code, s. 512.

The expression "cattle," includes any horse, mule, ass, swine, sheep or goat, as well as any neat cattle or animal of the bovine species, and by whatever technical or familiar name known, and shall apply to one animal as well as to many. R. S. C. c. 172, s. 1. Code, s. 3 (*d*).

No prosecution for this offence shall be commenced after the expiration of three months from its commission. Code, s. 551 (*e*).

Every pecuniary penalty recovered with respect to any such offence shall be applied in the following manner, that is to say: one moiety thereof to the corporation of the city, town, village, township, parish or place in which the offence was committed, and the other moiety, with full costs, to the person who informed and prosecuted for the same, or to such other person as to the justices of the peace seems proper. R. S. C. c. 172, s. 7.

The statute interdicts unnecessary abuse not for any lawful purpose, but whenever the purpose for which the act was done is to make the animal more serviceable for the use of man the statute ought not to be held to apply. For instance castration of horses or other animals is not prohibited. But cutting the combs of cocks in order to fit the birds for one or other of two purposes namely, cockfighting or winning prizes at exhibitions, is an offence within the Act. Murphy v. Manning, L. R. 2 Ex. D. 307.

Where an operation that has become customary is performed with reasonable care and skill on an animal, in the *bona fide* belief that it renders its flesh more fit as an article of human food, such an operation is not an offence within the meaning of this section, though it undoubtedly causes severe pain, and its utility may be open to doubt. Thus spaying sows is not an offence within this section. Lewis v. Fermor, 16 Cox, 176; 18 Q. B. D. 532.

The mere fact that the act causes pain will not render it punishable. Thus dishorning cattle is not an offence, provided the operation be skilfully and properly performed. Callaghan v. Society, 16 Cox, 101. See, however, Ford v. Wiley, 23 Q. B. D. 203.

Cruelty to an animal to be within the statute must cause substantial and unnecessary suffering. Without evidence of such suffering to keep parrots for a few hours without water on a railway is not an act of cruelty upon which a conviction can rightly follow, the birds being supplied with Indian corn. Swan v. Saunders, 14 Cox, 566.

The offence of aiding or assisting at the fighting of cocks can only be committed in a place specially kept or used for the purpose. Clarke v. Hague, 6 Jur. N. S. Q. B. 273; Morley v. Greenbaigh, 3 B. & S. 374. See s. 513 of the Code.

The 514th section of the Code relates to the conveyance of cattle by rail or boat, and provides that they shall not be kept for a longer period than twenty-eight consecutive hours without unloading the same for rest, water and feeding, for a period of at least five consecutive hours. The prosecution, however, must be within three months. See Code, s. 551 (*e*) (*ii*).

When an incorporated company is prosecuted, some knowledge of the particulars ought to be brought home to the owner or manager in case he is charged with the offence. See Small v. Warr, 47 J. P. 20 D.

DEFRAUDING CREDITORS.

See *ante*, p. 393.

DEPOSITS AND RETURNS BY PERSONS RECEIVING MONEY AT INTEREST.

The R. S. C. c. 126, provides that every person, corporation or institution, except chartered banks, receiving money in small sums on deposit at interest as savings, must make such returns to the Minister of Finance, as the Governor in Council from time to time requires, and every wilful refusal or neglect to obey any such Order in Council, is made a misdemeanour.

DESERTION.

Sections 73, 74 & 75 of the Code, with s. 9 of the R. S. C. c. 169, relate to the offences of enticing soldiers or sailors to desert.

"The Seamen's Act," R. S. C. c. 74, s. 104, inflicts severe penalties on every person who, by any means whatever, persuades or attempts to persuade any seamen to desert, or who wilfully harbours or secrets any deserter. Similar provisions are contained in the "Inland Waters Seamen's Act," R. S. C. c. 75, s. 28.

A conviction under s. 129 of the R. S. C. c. 74, for unlawfully harbouring foreign sailors, deserters from a foreign ship, should show on the face of the proceedings either the consent of both parties, or the written consent of the foreign consul, that the justice should proceed as required by s. 127 of the Act. Where such consent did not appear, an affidavit stating that the justice had the consent was not allowed to be read on showing cause against a rule *nisi* to quash the conviction.

Where in such prosecution both parties had treated the vessel as a foreign vessel and the master and sailors as foreigners, although there was no direct proof that they were so, it is too late in showing cause against a rule *nisi* to quash a conviction based on the vessel and crew being foreign, to object that there was not evidence of those facts. R. v. Blair, 24 S. C. N. B. 245.

DISORDERLY HOUSES.

(*See* VAGRANCY, SEE ALSO *ante*, p. 124.)

DISTURBING RELIGIOUS WORSHIP.

(*See* CHURCHES.)

DRIVING, WANTONLY AND FURIOUSLY.

Section 253 of the Code provides that everyone who having the charge of any carriage or vehicle, by wanton or furious driving or racing, or other wilful misconduct, or by wilful neglect, does, or causes to be done, any bodily harm to any person, is guilty of an indictable offence and liable to two years' imprisonment.

DRUNKENNESS.

Voluntary drunkenness will not exempt a person from criminal liability; for instance, A., in a fit of voluntary drunkenness, shoots B. dead, not knowing what he does, A.'s act is a crime. But involuntary drunkenness, and diseases caused by voluntary drunkenness may excuse; for instance, A., under the influence of a drug fraudulently administered to him, shoots B. dead, not knowing what he does, A.'s act is not a crime. Or if A. in a fit of *delirium tremens*, caused by voluntary drunkenness, kills B., mistaking him for a wild animal attacking A., the latter's act is not a crime. Stephen's Dig. 19.

A man cannot when drunk, in his own house, be forcibly removed therefrom, even at the request of his own family, unless his conduct is such as would constitute him a nuisance to the public, *i.e.*, by his creating a public disturbance. R. v. Blakely, 6 P. R. (Ont.) 244.

ELECTIONS.

"The Dominion Elections Act," R. S. C. c. 8, s. 70, amended by 51 V. c. 11, 53 V. c. 9 and 54 and 55 V. c. 19, contains various provisions for securing the secrecy of voting, and for preventing any interference with the freedom of the voter, and a penalty, not exceeding two hundred dollars, is imposed for violation. Under s. 73, each returning officer and his deputy is invested with all the powers of a justice of the peace, and may, by verbal order, arrest any person disturbing the peace and good order at the election, and may also require the delivery of any offensive weapons in the hands of any person within half-a-mile of the polling station. Any person convicted of a battery on election day, within two miles of the place where such election is begun, is guilty of aggravated assault, s. 77. By s. 78, strangers are not allowed to come into the polling district armed with offensive weapons. It is a misdemeanour to entertain any elector during the election, or to furnish or supply any ensign, standard, or set of colours, or any other flag, or any ribbon label, or like favour, to any person with intent that the same shall be carried in the district, on the day of

election, as a party flag or badge to distinguish the bearer as a supporter of a particular candidate. Sections 80, 81, 82.

Intoxicating liquors are not allowed to be sold or given during the whole of the polling day, under a penalty of one hundred dollars. *Ib.* s. 83.

Under s. 87, exercising undue influence over any voter is a misdemeanour. So under s. 100, it is a misdemeanour to forge any ballot paper, or (*b*) to supply any ballot paper to any person without authority, or (*c*) to put an improper ballot paper into the box, or (*d*) to fraudulently take out of the polling place any ballot paper, or (*e*) to interfere with any ballot box, or (*f*) to attempt to commit any of these offences. Under s. 102, stealing or tampering with election documents is felony. Under s. 104, it is a misdemeanour for any returning officer to act as agent of any candidate. By s. 112, the certificate of the returning officer is sufficient evidence of the due holding of the election, and of any person named in such certificate having been a candidate thereat.

EMBEZZLEMENT.

(*See* LARCENY.)

EMBRACERY.

Every one is guilty of an indictable offence and liable to two years' imprisonment who—

(*a*) dissuades or attempts to dissuade any person by threats, bribes or other corrupt means from giving evidence in any cause or matter, civil or criminal; or

(*b*) influences or attempts to influence, by threats or bribes or other corrupt means, any juryman in his conduct as such, whether such person has been sworn as a juryman or not; or

(*c*) accepts any such bribe or other corrupt consideration to abstain from giving evidence, or on account of his conduct as a juryman; or

(*d*) wilfully attempts in any other way to obstruct, pervert or defeat the course of justice. R. S. C. c. 173, s. 30. Code, s. 154.

Everyone commits the offence called embracery, who, by any means whatsoever, except the production of evidence and arguments in open court, attempts to influence or instruct any juryman, or to incline him to be more favourable to the one side than to the other, in any judicial proceeding, whether any verdict is given or not, and whether such verdict, if given, is true or false.

But it is essential to the existence of the offence of embracery that there should be a judicial proceeding, pending at the time the offence is alleged to have been committed. R. v. Leblanc, 8 L. N. 114, 29 L. C. J. 69.

A juryman himself may be guilty of this offence by corruptly endeavouring to bring over his fellows to his view. The offence is a misdemeanour, both in the person making the attempt, and also in those of the jury who consent.

There are certain other acts, interfering with the free administration of justice at a trial, which are considered as high misprisions and contempts, and are punishable by fine and imprisonment. Such are the following: intimidating the parties or witnesses; endeavouring to dissuade a witness from giving evidence, though it be without success; advising a prisoner to stand mute; assaulting or threatening an opponent for suing him, a counsel or attorney for being employed against him, a juror for his verdict, a gaoler or other ministerial officer for what he does in discharge of his duty; for one of the grand jury to disclose to the prisoner the evidence aganist him.

ESCAPE.

Sections 159 to 169 of the Code relate to escapes and rescues. An escape is where one who is arrested, gains his liberty by his own act, or through the permission or negligence of others, before he is delivered by the course of the law. Where the liberation of the party is effected either by himself, or others, without force, it is more properly called an *escape*; where it is effected by the party himself, with force, it is called *prison breaking*; where it is effected by others, with force, it is commonly termed *rescue*.

One W. was brought before magistrates in the custody of the 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, and verbally remanded the prisoner until the following day, telling the defendant to bring him up then, but on that day the defendant negligently permitted him to escape, and he was held to be properly convicted for permitting an escape. R. v. Shuttleworth, 22 Q. B. (Ont.) 372.

Under s. 552 of the Code, any one found committing any of the following offences, namely, (1) being at large while under sentence of imprisonment, or (2) breaking prison, or (3) escaping from custody, or (4) from prison, or (5) escaping from lawful custody, may be arrested without warrant by any person. See Part XI.

Every peace officer proceeding lawfully to arrest, with or without warrant, any person for any offence for which the offender may be arrested without warrant, and every one lawfully assisting in such arrest, is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by such flight, unless such escape can be prevented by reasonable means in a less violent manner. Code, s. 33.

Every private person proceeding lawfully to arrest without warrant any person for any offence for which the offender may be arrested without warrant is justified, if the person to be arrested takes to flight to avoid arrest, in using such force as may be necessary to prevent his escape by flight, unless such escape can be prevented by reasonable means in a less violent manner: Provided, that such force is neither intended nor likely to cause death or grievous bodily harm. Code, s. 34.

EVIDENCE.

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

As a general rule when justices are authorized by statute to hear and determine or examine witnesses, they have also the power to take the examinations on oath or solemn affirmation, as the case

may be, see Code, s. 851; and in every case where an oath or affirmation is directed to be made before a justice, he has full power and authority to administer the same, and to certify to its being made. R. S. C. c. 1, s. 7 (29).

"The Canada Evidence Act," 1893, 56 V. c. 31, s. 22, provides that every court and judge and every person having by law or consent of parties authority to hear and receive evidence, shall have power to administer an oath to every witness who is legally called to give evidence before that court, judge or person.

Section 25 provides that if a person called or desiring to give evidence objects on grounds of conscientious scruples to take an oath, or is objected to as incompetent to take an oath, such person may make the following affirmation: "I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth." And upon the person making such solemn affirmation, his evidence shall be taken, and have the same effect as if taken under oath. Evidence given in this way involves a liability to punishment for perjury in all respects as if the witness had been sworn. *Ib.* s. 24.

The oath is generally in the following form:—

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

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

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

A conviction for crime, or an interest in the result as a party does not render a witness incompetent, 56 V. c. 31, s. 3. In some cases, however, the evidence of an interested witness must be corroborated.

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

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

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

A confession of a prisoner is only admissible when free and voluntary. Any inducement to confess held out to the prisoner by a person in authority, or any undue compulsion upon him, will be sufficient to exclude the confession: Thus if an oath is administered to the prisoner before taking his statement under s. 591 of the Code, the oath will be a sufficient constraint or compulsion to render his statement inadmissible. R. v. Field, 16 C. P. (Ont.) 98.

But the deposition on oath of a witness is admissible against such witness, if he is afterwards charged with a crime. *Ib.* See also R. v. Finkle, 15 C. P. (Ont.) 453; R. v. Coote, L. R. 4 P. C. App. 599; excepting so much of them as consists of answers to questions to which he has objected, as tending to criminate him, but which he has been improperly compelled to answer. The exception depends upon the principle "*nemo tenetur seipsum accusare*," but does not apply to answers given without objection, which are to be deemed voluntary." See now 56 V. c. 31, s. 5.

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

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 it you had better tell about it." Whereupon the prisoner said that he did the act charged against him. It was held that the admission was not receivable in evidence and a conviction grounded thereon was improper. R. v. Romp, 17 O. R. 567.

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

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

"The Canada Evidence Act," 1893, 56 V. c. 31, s. 8, provides that *prima facie* evidence of any proclamation, order, regulation or appointment may be given by production of a copy of the *Canada Gazette*, and in several other ways specified in the Act.

"The Fugitive Offenders Act," R. S. C. c. 143, s. 18, contains some special provisions as to the authentication of warrants, depositions, official certificates or judicial documents.

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

But a child of any age if capable of distinguishing between good and evil may be admitted to give evidence. A child of six years of age was examined; on being interrogated by the judge

and making answers that there was a God, that people would be punished in hell who did not speak the truth, and that it was a sin to tell a falsehood under oath, although he stated he did not know what an oath was. R. v. Berube, 3 L. C. R. 212.

Section 25 of "The Canada Evidence Act, 1893," provides that in any legal proceeding where a child of tender years is tendered as a witness, and such child does not, in the opinion of the judge, justice, or other presiding officer, understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if in the opinion of the judge, justice or other presiding officer, as the case may be, such child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth. But no case shall be decided on such evidence alone, and such evidence must be corroborated by some other material evidence.

Section 685 of the Code, provides for taking the evidence of a child not under oath, on any charge for carnally knowing, or attempting to carnally know, a girl under fourteen, or of any charge under s. 259 for indecent assault. The child may be the one on whom the offence is committed, or any other child of tender years who does not in the opinion of the justice understand the nature of an oath. But such evidence must be corroborated by some other material evidence.

Before the passing of this section no testimony whatever could on a criminal trial be received except upon oath and the testimony of an infant not competent to take an oath could not be accepted at all. Even under this section of the Code, unsworn evidence of the girl will not be admissible on other counts of the indictment than those specified in this section. In other words the mere fact that an indictment contains counts on which unsworn evidence is inadmissible along with counts on which it is, does not make the unsworn evidence admissible except in respect of the special offences mentioned in this section. R. v. Paul, 25 Q. B. D. 202.

The evidence taken under this 685th section is not a deposition within the meaning of s. 687 of the Code, and if at the trial the girl is so ill as not to be able to travel, her evidence cannot be made available under this section. R. v. Pruntey, 16 Cox, 344.

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

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

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

But advice given by a solicitor to his client for the legitimate purpose of assisting the latter in his defence on a criminal charge is privileged. It is otherwise, however, when the advice is before

the commission of the crime, and for the purpose of guiding or helping the client to commit it. R. v. Cox, 15 Cox, 611.

Under the law as it formerly stood except in the case of a common assault and of a prosecution for neglect to maintain, etc., under s. 19 of the R. S. C. c. 162, a prisoner could not give evidence for himself, nor could his wife be admitted as a witness for him. See R. v. Humphreys, 9 Q. B. (Ont.) 337; R. v. Madden, 14 Q. B. (Ont.) 588.

"The Canada Evidence Act, 1893," 56 V. c. 31, which applies to all criminal proceedings and to all civil proceedings and other matters whatsoever respecting which the Parliament of Canada has jurisdiction in this behalf, provides that a person shall not be incompetent to give evidence by reason of interest or crime. *Ib.* s. 3.

Every person charged with an offence and the wife or husband as the case may be of the person so charged shall be a competent witness whether the person so charged is charged solely or jointly with any other person. Provided, however, that no husband shall be competent to disclose any communication made to him by his wife during their marriage and no wife shall be competent to disclose any communication made to her by her husband during their marriage.

The failure of the person charged or of the wife or husband of such person to testify shall not be made the subject of comment by the judge or by counsel for the prosecution in addressing the jury. *Ib.* s. 4.

Prior to this Act a married woman might give evidence in favour of a person who had committed a crime jointly with her husband, provided the husband was not on trial for the offence. R. v. Thompson, 2 Hannay 71. And of course she may do so now.

Prior to the passing of the R. S. C. c. 162, s. 19, a wife could not testify against her husband when she was prosecuting him for neglect to maintain her. See R. v. Bissell, 1 O. R. 514.

She is now competent and so is the husband.

A defendant was charged by his wife before a magistrate with refusing to provide necessary clothing and lodging for herself

and children. At the close of the case for the prosecution defendant was tendered as a witness on his own behalf. The magistrate refused to hear his evidence, not because he was the defendant but because he did not wish to hear evidence for the defence, and subsequently without further evidence committed him for trial. It was held that the defendant's evidence should have been taken for the defence, that a magistrate is bound to accept such evidence in cases of this kind and give it such weight as he thinks proper, and that the exercise of his discretion to the contrary is open to review. R. v. Meyer, 11 P. R. (Ont.) 477.

The laws of England respecting the solemnization of marriage are not applicable to the Indian population of the North-West Territory, and a marriage according to the customs of the Indians there is legal so as to make the wife of the prisoner incompetent as a witness for or against him prior to the recent Act. Where an Indian charged with assault occasioning actual bodily harm, tendered two women, whom he called his wives, as witnesses, the evidence of the first married was rejected, and that of the other admitted, though according to the evidence both were his wives, under the custom of the Indians. R. v. Nan-e-quis-a Ka; North West Ter. Reps. 21.

Both would be admissible under the late Act.

So, prior to the late Act, a defendant, charged with an assault upon a constable while serving a summons under the Act as to summary convictions, was held incompetent. R. v. McFarlane, 27 S. C. N. B. 528; 16 S. C. R. 393. Also, where charged with illegally presenting a pistol, under s. 4 of the R. S. C. c. 148. *Ex parte* Porter, 28 S. C. N. B. 587.

But in these cases the defendant can now testify.

In Ontario, the 55 V. c. 14, s. 1, repeals s. 9 of the R. S. O. c. 61, and substitutes the following therefor.

On the trial of any proceeding, matter, or question under any Act of the Legislature of Ontario, or on the trial of any such proceeding, matter or question before any justice of the peace, mayor, or police magistrate, in any matter cognizable by such justice, mayor, or police magistrate, the party opposing or defend-

ing, or the wife or husband of the person opposing or defending, shall be competent and compellable to give evidence therein.

Under the repealed Act, where the charge was of some matter "not being a crime," the parties were competent.

But the trial of an offence against a city by-law in the erection of a wooden building within the fire limits was held to be a charge of a crime, and the defendant was held neither competent nor compellable to give evidence, and a conviction on his evidence was quashed. R. v. Hart, 20 O. R. 611; R. v. Bittle, 21 O. R. 605.

So 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. R. v. Becker, 20 O. R. 676.

In both the foregoing cases the parties would now be competent; in the case of the by-law under the late statute in Ontario, and in the other case of maliciously pointing a loaded fire arm under "The Canada Evidence Act, 1893."

On the hearing of any information or complaint exhibited or made under s. 424 of the 55 V. c. 42, a magistrate must receive the evidence of the defendant. R. v. Grant, 18 O. R. 169.

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

But now no person shall be excused from answering any question upon the ground that the answer to such question may tend to criminate him or may tend to establish his liability to a civil proceeding at the instance of the crown or of any other person. Provided however that no evidence so given shall be used or receivable in evidence against such person in any criminal proceeding thereafter instituted against him other than a prosecution for perjury on giving such evidence. 56 V. c. 31, s. 5.

A prisoner might always if he choose give evidence against himself. Thus where a prisoner being prosecuted for selling liquor

on a Sunday admitted that he was a licensed tavern-keeper, and the only other evidence of his being a licensed tavern-keeper was that of a witness who stated that he knew where the defendant's licensed tavern was, it was held that this was sufficient evidence of the fact, and that it was not improper for the magistrate to take the defendant's admission as evidence against him. *Ex parte* Birmingham, 2 Pugs. & Bur. 564.

There are several statutory exceptions to the former rule that a prisoner was not bound to criminate himself. In a prosecution under "The Canada Temperance Act," R. S. C. c. 106, s. 114, the prisoner was compellable to give evidence against himself. R. v. Fee, 13 O. R. 590, overruling R. v. Halpin, 12 O. R. 330.

The 51 V. c. 34, s. 13, however removed the obligation and now the 56 V. c. 31, s. 5, restores it. See *ante*, p. 408.

So the parties are competent in a prosecution under the Act respecting the preservation of the peace in the vicinity of public works. R. S. C. c. 151, s. 22.

Under the "Dominion Elections Act," R. S. C. c. 8, s. 109, no person is excused from answering on the ground that the answer will tend to criminate such person.

The fact that evidence has been improperly procured is not a reason for rejecting such evidence. It follows that if one who has had his watch stolen suspected a particular person of the theft, and the owner of the watch knocked the other down and found the watch upon him, the fact that the suspected person had the watch would be evidence against him, though the evidence was obtained in an irregular way. So under the "Canada Temperance Act," though there is no right to issue a search warrant except in aid of a prosecution pending, yet evidence obtained under a search warrant irregularly issued may be used when a charge is afterwards laid. R. v. Doyle, 12 O. R. 347.

No person accused of forgery as defined in s. 423 of the Code, shall be convicted upon the evidence of one witness unless such witness is corroborated in some material particular by evidence implicating the accused. Code, s. 684.

This section alters the law. Formerly it was only the evidence of the person whose name was forged that required corroboration, now any witness must be corroborated.

Under the former law the evidence of the person whose name was forged proving the falsity of signature, did not require corroboration. R. v. Farrell, North West Ter. Reps. 95.

Where the defendant was convicted of uttering with knowledge that it was a forgery, the indorsement of the name of "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, and 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, it was held that members of the firm of Taylor Brothers were not interested, and their evidence was therefore sufficient to corroborate that of the other witnesses. R. v. Selby, 16 O. R. 255.

On the trial of an indictment for forgery and 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 who received the note, who was in attendance in her husband's shop as his agent, proved the uttering. It was held that the note having been 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. The wife's interest, if any, was to prove the genuineness of the note. R. v. Rhodes, 22 O. R. 480.

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 liability of the firm to creditors at the time, of J.'s withdrawal. But the majority of the court held that J. was not an

interested person and that his evidence did not require corroboration. R. v. Hagerman, 15 O. R. 598.

In the foregoing cases the evidence of one witness would not now be sufficient without corroboration, s. 684 of the Code requiring corroboration in the case of any witness called whether interested or not.

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

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

In certain cases there are statutory provisions as to the sufficiency of one witness. Thus under "The Steamboat Inspection Act," R. S. C. c. 78, when no other provision is made in the case, penalties may be recovered on the evidence of one credible witness who may be the prosecuting inspector himself, 56 V. c. 25, s. 2. So under the Act respecting the "Navigation of Canadian Waters," R. S. C. c. 79, s. 8, the evidence of one credible witness is sufficient. The evidence of one credible witness, other than the plaintiff or person prosecuting, is sufficient under "The Pilotage Act," R. S. C. c. 80, s. 101, also under "The Militia Act," R. S. C. c. 41, s. 111, and "The Indian Act," 51 V. c. 22, s. 4. Independently of these enactments the evidence of one witness is in general sufficient.

But no person accused of an offence under any of the hereunder mentioned sections shall be convicted upon the evidence of one witness, unless such witness is corroborated in some material particular by evidence implicating the accused:

(*a*) Treason, Part IV. s. 65;

(*b*) Perjury, Part X. s. 146;

(*c*) Offences under Part XII. ss. 181 to 190 inclusive;

(*d*) Procuring feigned marriage, Part XXII. s. 277;
(*e*) Forgery, Part XXXI. s. 423. Code, s. 684.

Section 181 relates to having illicit connection with any girl of previously chaste character, above the age of fourteen and under sixteen years. S. 182 to seduction under promise of marriage; s. 183 to the seduction of a ward or servant by a guardian or employer; s. 184 to the seduction of females who are passengers on vessels; ss. 185 and 186 to the unlawful defiling of women or procuring prostitutes; s. 187 to the offence of householders who permit girls to be defiled on their premises; s. 188 to a conspiracy to defile; s. 189 to carnally knowing idiots; and s. 190 to the prostitution of Indian women. In all the foregoing cases, as well as in that of procuring a feigned marriage, the evidence of one witness is not sufficient without corroboration.

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

Such commissioner shall take such statement and shall subscribe the same and add thereto the names of the persons, if any, present at the taking thereof, and if the deposition relates to any indictable offence for which any accused person is already committed or bailed to appear for trial shall transmit the same, with the said addition, to the proper officer of the court at which such accused person is to be tried; and in every other case he shall transmit the same to the clerk of the peace of the county, division or city in which he has taken the same, or to such other officer as has charge of the records and proceedings of a superior court of criminal jurisdiction in such county, division or city, and such clerk of the peace or other officer shall preserve the same and file it

of record, and upon order of the court or of a judge transmit the same to the proper officer of the court where the same shall be required to be used as evidence. R. S. C. c. 174, s. 220. Code, s. 681.

If the evidence of a sick person has been taken under commission as provided in s. 681, and upon the trial of any offender for any offence to which the same relates, the person who made the statement is proved to be dead, or if it is proved that there is no reasonable probability that such person will ever be able to attend at the trial to give evidence, such statement may, upon the production of the judge's order appointing such commissioner, be read in evidence, either for or against the accused, without further proof thereof,—if the same purports to be signed by the commissioner by or before whom it purports to have been taken, and if it is proved to the satisfaction of the court that reasonable notice of the intention to take such statement was served upon the person (whether prosecutor or accused) against whom it is proposed to be read in evidence, and that such person, or his counsel, or solicitor had, or might have had, if he had chosen to be present, full opportunity of cross-examining the person who made the same. Code, s. 686.

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

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

During the taking of the deposition of a person under the 681st section, before the prisoner's solicitor had concluded his cross-examination the witness became so ill that the presiding magistrate stopped the cross-examination, the woman being so ill at the time

that she was unable to comprehend the drift of the questions put to her. The court held that it was not sufficient that the prisoner should have had such opportunity of cross-examination as the circumstances permitted, and that as the prisoner had not had full opportunity of cross-examination, the deposition was inadmissible in the absence of any proof that the prisoner was asking vexatious questions in order to defeat the statute. R. v. Mitchell, 17 Cox, 503. The statement was also inadmissible as a dying declaration, because there was no proof of a hopeless expectation of immediate death; nor as a statement in the presence of the prisoner, because the latter could not be expected to make any denial under the circumstances. *Ib.*

A dying declaration is only admissible in evidence where the death of the deceased is the subject of the charge and the circumstances of the death the subject of the dying declaration. There must also be an unqualified belief in the nearness of death, a belief without hope that the declarant is about to die, and the burden of proving the facts that render the declaration admissible is upon the prosecution. R. v. Jenkins, L. R. 1 C. C. R. 192.

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

Statements made behind the back of a prisoner are not admissible in evidence as dying declarations, unless the person making them entertains at the time a settled hopeless expectation of immediate death. R. v. Osman, 15 Cox, 1. But where the deceased, shortly after the occurrence which resulted in her death, was seen standing at the door of a neighbour's house in a fainting

condition and apparently dying, she said, "I am dying, look to my children," a statement then made as to the cause of her injuries was held admissible. R. v. Goddard, 15 Cox, 7.

If upon the trial of any accused person it is proved upon the oath or affirmation of any credible witness that any person whose deposition has been taken by a justice in the preliminary or other investigation of any charge is dead, or so ill as not to be able to travel, or is absent from Canada, and if it is also proved that such deposition was taken in the presence of the person accused, and that he, his counsel or solicitor, had a full opportunity of cross-examining the witness, then if the deposition purports to be signed by the justice by or before whom the same purports to have been taken it shall be read as evidence in the prosecution without further proof thereof, unless it is proved that such deposition was not in fact signed by the justice purporting to have signed the same. R. S. C. c. 174, s. 222. Code, s. 687.

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

It was proposed to read the deposition of a witness, on the ground that the witness was so ill as not to be able to travel. The evidence upon that point was as follows:—The medical attendant of the witness was called and said, "I know M. L., she is very

nervous and seventy-four years of age. I think she would faint at the idea of coming into court, but I think that she could go to London to see a doctor without difficulty or danger. I think the idea of seeing so many faces would be dangerous to her, and that she is so nervous that it might be dangerous to her to be examined at all. I think she could distinguish between the court going to her house, and she herself coming to the court." The witness, whose deposition it was proposed to read, lived not far from the court. The deposition was held inadmissible. R. v. Farrell, L. R. 2 C. C. R. 116.

As a general rule there must be medical evidence of the illness. R. v. Welton, 9 Cox, 296. But in one case the deposition of a married woman was admitted on the evidence of her husband (without medical evidence) that she was from pregnancy unable to attend. R. v. Jones, 3 F. & F. 285.

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

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

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

Upon a prosecution for uttering forged notes the deposition of one S. taken before the police magistrate on the preliminary investigation, was read upon the following proof that S. was absent from Canada. R. swore that S. had a few months before left her R's. house, where she, S., had for a time lodged, that she had since twice heard from her in the United States, but not for six months. The Chief Constable of Hamilton, where the prisoner was tried, proved ineffectual attempts to find S. by means of personal enquiries in some places and correspondence with the police of

other cities. S. had for some time lived with the prisoner or his wife. On a case reserved the court held that the admissibility of the deposition was in the discretion of the judge at the trial, and that it could not be said that he had wrongly admitted it. R. v. Nelson, 1 O. R. 500.

Upon a prosecution for wounding with intent to murder, the deposition of one C. taken before the police magistrate on the preliminary investigation, was read on the following proof that C. was absent from Canada. A witness deposed as follows: "C. is to the best of my belief in the United States. He was employed about ten days ago as one of the crew on a steamer then running between Victoria and an American port. He said when he left me he was going on board the steamer. The steamer has not been on that route since. She is now running between two American ports," and the court held there was sufficient proof of absence from Canada. R. v. Pescaro, 2 B. C. L. R. 144.

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

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

The words in this section "whose deposition has been taken by a justice in the preliminary or other investigation of any charge" refer to this and the 590th section, and the deposition will not be admissible unless it shows that the accused was charged with an indictable offence and that he, having knowledge of the charge, had

a full opportunity of cross-examining the witness. The test of admissibility is the opportunity given the prisoner to cross-examine, he having knowledge that it is his interest to do so. R. v. Milloy, 6 L. N. 95.

Where a prisoner is charged before a magistrate with obtaining money by false pretences, and afterwards indicted for uttering a forged promissory note, the charges arising out of one and the same transaction, and being in fact identical, and the prisoner, having had the opportunity of cross-examination before the magistrate, it was held that the deposition of a witness taken at such hearing, and who was afterwards unfit to travel to give evidence, was admissible and might be read at the trial for uttering the forged promissory note. R. v. Williams, 12 Cox, 101.

When an indictment is presented to a grand jury they are entitled to peruse the depositions of an absent witness without proof that he is so ill as to be unable to travel or is absent from Canada. R. v. Howes, 2 B. C. L. R. 307.

A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but if the witness, in the opinion of the court, proves adverse, such party may contradict him by other evidence, or, by leave of the court, may prove that the witness made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness, and he shall be asked whether or not he did make such statement. R. S. C. c. 174, s. 234; Code, s. 699.

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

Upon any trial a witness may be cross-examined as to previous statements made by him in writing, or reduced to writing, relative to the subject-matter of the case, without such writing being shown

to him; but if it is intended to contradict the witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him; and the judge, at any time during the trial, may require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he thinks fit: Provided that a deposition of the witness, purporting to have been taken before a justice on the investigation of the charge and to be signed by the witness and the justice, returned to and produced from the custody of the proper officer, shall be presumed *prima facie* to have been signed by the witness. R. S. C. c. 174, s. 235. Code, s. 700.

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

If a witness, upon cross-examination as to a former statement made by him relative to the subject-matter of the case and inconsistent with his present testimony, does not distinctly admit that he did make such statement, proof may be given that he did in fact make it; but before such proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness and he shall be asked whether or not he did make such statement. R. S. C. c. 174, s. 236; Code, s. 701.

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

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

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

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

Where a prisoner was charged with the murder of her child by poison, and the defence was that its death resulted from an accidental taking of such poison, evidence to prove that two other children of hers and a lodger in the house had died previous to the present charge from the same poison was held to be admissible. R. v. Cotton, 12 Cox, 400; R. v. Geering, 18 L. J. M. C. 211, followed. See also R. v. Roden, 12 Cox, 630.

The prisoner was indicted along with W., the first count charging W. with forging a circular note of the National Bank of Scotland, and the second with uttering it knowing it to be forged. The prisoner was charged as an accessory before the fact. Evidence was admitted showing that two persons named F. and H. had been tried and convicted in Montreal of uttering similar forged circular notes printed from the same plate as those uttered by W., that the prisoner was in Montreal with F., they having arrived and registered their names together at the same hotel and occupied adjoining rooms, that after F. and H. had been convicted on one charge they admitted their guilt on several others, and that a number of these circular notes were found on F. and H. which

were produced at the trial of the prisoner. Before the evidence was tendered it was proved that the prisoner was in company with W., who was proved to have uttered similar notes. Evidence was also admitted shewing that a large number of the notes were found concealed at a place near where the prisoner had been, and were concealed as was alleged by him after W. had been arrested. It was held that the evidence was properly received in proof of the guilty knowledge of the prisoner. R. v. Bent, 10 O. R. 557.

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

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

Where a prisoner is indicted for obtaining a promissory note with intent to defraud, evidence of similar frauds on others showing that the prisoner was at the time engaged in practising a series of systematic frauds on the community is admissible. R. v. Hope, 17 O. R. 463.

Upon a charge of an attempt to commit a rape, the prosecutrix may be cross-examined as to the fact of her having had connection with the prisoner previously to the commission of the alleged offence, and should she deny the fact of such connection having

taken place, evidence may be given in order to contradict such denial. R. v. Riley, 16 Cox, 191; 18 Q. B. D. 481. But her denial of intercourse with persons other than the prisoner could not be contradicted. *Ib.*

When proceedings are taken against any person for having received goods, knowing them to be stolen, or for having in his possession stolen property, evidence may be given, at any stage of the proceedings, that there was found in the possession of such person other property stolen within the preceding period of twelve months, and such evidence may be taken into consideration for the purpose of proving that such person knew the property which forms the subject of the proceedings taken against him to be stolen: Provided, that not less than three days' notice in writing has been given to the person accused, that proof is intended to be given of such other property, stolen within the preceding period of twelve months, having been found in his possession; and such notice shall specify the nature or description of such other property, and the person from whom the same was stolen. Code, s. 716.

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

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

To manufacture false evidence for the purpose of misleading a judicial tribunal is an indictable offence at common law, though the evidence is not used, though in the case of a cheat or fraud against a private individual, it is necessary that some injury should

have resulted from the act. R. v. Vreones, L. R. 1 Q. B. 360, (1891).

Section 151 of the Code enacts that every one is guilty of an indictable offence and liable to seven years' imprisonment who, with intent to mislead any court of justice or person holding any such judicial proceeding as aforesaid, fabricates evidence by any means other than perjury or subornation of perjury. See also ss. 145 to 158.

As to the evidence required in cases of polygamy, see Code, s. 706. As to stealing ores or minerals, s. 707; as to stealing timber, s. 708; as to offences relating to public stores, s. 709; and as to fraudulent marks on merchandize, s. 710.

EXCISE.

Under the R. S. C. c. 34, s. 82, every manufacturer who neglects or refuses to keep his license posted up in a conspicuous place in his manufactory, incurs a penalty of fifty dollars for the first offence, and one hundred dollars for each subsequent offence. Under s. 86, it is an indictable offence to put into any stamped packages, barrels or casks, any article or commodity on which the duty has not been paid, or which has not been inspected under the Act. Various other penalties are imposed under the Act. Under s. 91, refusing to assist any officer of Inland Revenue, is an indictable offence. S. 93, imposes a penalty of one hundred dollars for using weights and measures not duly inspected and approved. S. 94, makes it an indictable offence to break the Crown's lock or seal, abstract goods or counterfeit labels. So to take away goods seized or detained is an indictable offence. *Ib.* s. 100. S. 158, imposes certain penalties on distillers and renders various acts misdemeanours, and s. 220, refers in the same way to malting and malthouses, and s. 313, to tobacco and cigars. The Act has been amended by the 51 V. c. 16, the 52 V. c. 15, the 53 V. c. 23, the 54-55 V. c. 46, and the 55-56 V. c. 22.

EXPLOSIVE SUBSTANCES.

Every one is guilty of an indictable offence and liable to imprisonment for life, who wilfully causes by any explosive sub-

stance, an explosion of a nature likely to endanger life or to cause serious injury to property, whether any injury to person or property is actually caused or not. R. S. C. c. 150, s. 3. Code, s. 99.

Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who wilfully—

(*a*) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion of a nature likely to endanger life, or to cause serious injury to property;

(*b*) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life or to cause serious injury to property, or to enable any other person by means thereof to endanger life or to cause serious injury to property—

Whether any explosion takes place or not and whether any injury to person or property is actually caused or not. R. S. C. c. 150, s. 3. Code, s. 100.

Every one is guilty of an indictable offence and liable to seven years' imprisonment who makes, or knowingly has in his possession or under his control, any explosive substance under such circumstances as to give rise to a reasonable suspicion that he is not making it, or has it not in his possession or under his control, for a lawful object, unless he can show that he made it or had it in his possession or under his control for a lawful object. R. S. C. c. 150, s. 5. Code, s. 101.

The expression "explosive substance" includes any materials for making an explosive substance; also any apparatus, machine, implement, or materials used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; and also any part of any such apparatus, machine or implement. R. S. C. c. 150, s. 2 (*b*). Code, s. 3 (*i*).

Keeping explosives, such as dynamite, gunpowder, etc., near habitations or places of public resort, in such quantity that injury to property or life would be caused if they were to explode, is a common nuisance and indictable irrespective of such incidents as carelessness and negligence. R. v. Holmes, 5 Russ. & Geld. 498.

EXTORTION AND OTHER MISCONDUCT OF PUBLIC OFFICERS.

Every malfeasance or culpable non-feasance of an officer of justice with relation to his office, is an offence punishable by fine or imprisonment or both. Forfeiture of the office, if profitable, will also generally ensue.

As to malfeasance, in cases of oppression and partiality, the officers are clearly punishable, and not only when they act from corrupt motives, but even when this element is wanting, if the act is clearly illegal; for example, if a magistrate commit in a case in which he has no jurisdiction.

Extortion, in the more strict sense of the word, consists in an officer's unlawfully taking, by colour of his office, from any man any money or thing of value that is not due to him, or more than is due, or before it is due. This offence is of the degree of misdemeanour, and all persons concerned therein, if guilty at all, are principals. Two or more persons may be jointly guilty of extortion where they act together and concur in the demand. R. v. Tisdale, 20 Q. B. (Ont.) 273.

Where two persons sat together as magistrates, and one of them exacted a sum of money from a person charged before them with felony, the other not dissenting, it was held that they might be jointly convicted. *Ib.*

As to non-feasance. An officer is equally liable for neglect of his duty as for active misconduct. A refusal by any person to serve an office to which he has been duly appointed, and from which he has no ground of exemption, is an indictable offence. An indictment may be maintained against a deputy-returning officer at an election for refusing, on the requisition of the agent of one of the candidates, to administer the oath to certain parties tendering themselves as voters. R. v. Bennett, 21 C. P. (Ont.) 238.

A person resisting a constable in executing an execution issued by a justice of the peace in the form K, in the schedule to the N. B. R. S. c. 137, is liable to an indictment. R. v. McDonald, 4 Allen, 440. The fact that the defendant did not know that the person assaulted was a peace officer, or that he was acting in the

execution of his duty, furnishes no defence. R. v. Forbes, 10 Cox, 362. It is sufficient that the constable was actually in the execution of his duties at the time of the assault.

EXTRADITION.

For a full discussion of this subject and the procedure before magistrates, see Clarke & Sheppard's Criminal Law of Canada, p. 10.

FACTORIES ACT.

(*See* ONTARIO FACTORIES ACT)

FALSE PERSONATION.

(*See* BRIBERY, PERSONATION.)

FALSE PRETENCES.

A false pretence is a representation, either by words or otherwise, of a matter of fact either present or past, which representation is known to the person making it to be false, and which is made with a fraudulent intent to induce the person to whom it is made to act upon such representation.

Exaggerated commendation or depreciation of the quality of anything is not a false pretence, unless it is carried to such an extent as to amount to a fraudulent misrepresentation of fact.

It is a question of fact whether such commendation or depreciation does or does not amount to a fraudulent misrepresentation of fact. Code, s. 358.

In order to support a charge of obtaining money by false pretences there must be a pretence of an existing fact; it must appear that the party defrauded has been induced to part with his money by the pretence, and the pretence must be untrue. R. v. Crab, 11 Cox, 85.

The prisoner must represent some fact as existing which does not exist, and a mere promise by the prisoner as to future conduct will not render him liable, the prosecutor relying upon the promise rather than being deceived by the representation. R. v. Bertles, 13 C. P. (Ont.) 607. But a fraudulent misrepresentation of an existing fact accompanied by a promise is a sufficient false pretence.

R. v. West, 8 Cox, 12. Where the prosecutor lent the prisoner money on the false pretence that he was going to pay his rent, the court held that this was not a false pretence of an existing fact, though the prosecutor would not have lent the money but for the pretence. R. v. Lee, 9 Cox, 304. But where money was obtained by the prisoner from an unmarried woman on the false representation that he was a single man and that he would furnish a house with the money and would then marry her, it was held that the false representation of an existing fact (that he was a single man), was sufficient to support a conviction for false pretences, although the money was obtained by that representation united with the promise to furnish a house and then marry her. R. v. Jennison, 9 Cox, 158; see also R. v. Fry, 7 Cox, 394.

It is essential to constitute the offence of obtaining goods by false pretences, (1) That the statement upon which the goods are obtained must be untrue, (2) the prisoner must have known at the time he made the statement, that it was untrue, (3) the goods must have been obtained by reason of this false statement. R. v. Burton, 16 Cox, 62.

Where a life insurance agent obtained payment of a premium after the time had expired, on a representation that payment "would be effectual," it was held that this amounted to a representation that the policy had not lapsed or become void, and that he had authority to say that the payment would keep the policy alive for another year, and a conviction for obtaining by false pretences was affirmed. R. v. Powell, 15 Cox, 568.

Not only is it necessary that there be a false pretence of an existing fact, but the prosecutor must be induced to part with his money in consequence of the false pretence; it must be the motive operating on his mind and inducing him to part with his money; in other words the prosecutor must be deceived by the representation. R. v. Gemmell, 26 Q. B. (Ont.) 312; R. v. Connor, 14 C. P. (Ont.) 529. If it is false to his knowledge it does not come within the statute. R. v. Mills, 7 Cox, 263.

It is sufficient if the party is partly and materially, though not entirely, influenced by the false pretence. R. v. English, 12 Cox,

171. It is immaterial that the prosecutor is influenced in part by a statement of the prisoner which is true. R. v. Lince, 12 Cox, 451; see also R. v. Howorth, 11 Cox, 588.

The false pretence may be by a letter written by the prisoner, as well as by words. If the words of the letter fairly and reasonably contain a statement of a false pretence, the prisoner may be convicted. R. v. Cooper, L. R. 2 Q. B. D. 510.

It is not absolutely necessary that the pretence should be in writing or by words. R. v. Rigby, 7 Cox, 507.

The expression "false pretence" in the statute means a false representation, made either by words, by writing or by conduct, that some fact exists or existed, and such a representation may amount to a false pretence, although a person of common prudence might easily have detected its falsehood by enquiry, and although the existence of the alleged fact was in itself impossible.

But the expression "false pretence" does not as we have already seen, include a promise as to future conduct, not intended to be kept, unless such promise is based upon or implies an existing fact falsely alleged to exist, or such untrue commendation, or untrue depreciation of an article which is to be sold, as is usual between sellers and buyers, unless such untrue commendation or depreciation is made by means of a definite false assertion as to some matter of fact capable of being positively determined. R. v. Bernard, 7 C. & P. 784; R. v. Hazleton, L. R. 2 C. C. R. 134.

Questions frequently arise as to whether giving a cheque on a bank, in which the drawer of the cheque has no funds, is an obtaining by false pretences. It seems clear that drawing a cheque on a bank, where the drawer has no *account*, would be a false pretence, but where the drawer has an account, the mere fact that there are no funds is not sufficient; there must also be evidence that the drawer intended to defraud and obtain goods or money on the cheque, and did not intend to pay it on presentation. See R. v. Hazleton, *supra*.

The offence is complete when the false pretence is made. R. v. Byrne, 10 Cox, 369.

The prisoner wrote to the prosecutor to induce him to buy counterfeit bank notes. The prosecutor, in order to entrap the

prisoner and bring him to justice, pretended to assent to the scheme, arranged a meeting of which he informed the police, and had them placed in a position to arrest the prisoner at a signal from the prosecutor. At such meeting the prisoner produced a box which he said contained counterfeit bank notes, which he agreed to sell to the prosecutor for a certain sum. The prisoner gave a box to the prosecutor which h pretended to be the one containing the notes, and the prosecutor then gave the prisoner $50, and a watch, as security for the balance which he had agreed to pay. The prosecutor immediately gave the signal to the police, and seized the prisoner and held him until they arrested him and took the money and watch from him. On examining the box given the prosecutor, it was ascertained that the prisoner had not given him the one containing the notes as he pretended, but a similar one containing waste paper. The box containing the notes was found on the prisoner's person. It was clear and undisputed that the motive of the prosecutor in parting with the possession of the money and watch as he had done was to entrap the prisoner. The prisoner having been convicted of obtaining the money and watch of the prosecutor by the false pretence of giving him the counterfeit notes, which he did not give, the majority of the court held the conviction right. R. v. Corey, 22 S. C. N. B. 543.

A clause of a deed by which a borrower of a sum of money falsely declares a property well and truly to belong to him may constitute a false pretence. R. v. Judah, 8 L. N. 124.

A misrepresentation of quantity is a sufficient false pretence to sustain an indictment. R. v. Sherwood, 7 Cox, 270. So if a man is selling an article by weight and falsely represents the weight to be greater than it is, and thereby obtains payment for a quantity greater than that delivered, he is indictable for obtaining money by false pretences. R. v. Ridgway, 3 F. & F. 838.

A wilful representation of a definite fact with intent to defraud, the fact being cognizable by the senses, as where a seller represents the quantity of coal to be fourteen tons, when it is in fact only eight tons, but so packed as to look more, or where the seller by manœuvering contrives to pass off tasters of cheese as if they were

extracted from the cheese offered for sale whereas they are not, is a false pretence. R. v. Goss, 8 Cox, 262.

Exaggeration or puffing of the quality of goods in the course of a bargain is not within the statute. R. v. Bryan, 7 Cox, 313. Unless it is carried to such an extent as to amount to a fraudulent misrepresentation of fact. See Code, s. 358 (2).

On an indictment for obtaining money by false pretences, it was proved that the prisoner, a travelling hawker, represented to the prosecutor's wife that he was a tea dealer from Leicester, and induced her to buy certain packages, which he stated to contain good tea, but three-fourths of the contents of which was not tea at all, but a mixture of substances unfit to drink, and deleterious to health. It was proved that the prisoner knew the real nature of the contents of the packages, and that he designedly, falsely pretended that it was good tea, with intent to defraud. It was held that the prisoner was guilty of obtaining money by false pretences. R. v. Foster, L. R. 2 Q. B. D. 301.

Where money has been obtained on a forged cheque knowingly, it does not amount to larceny, but to obtaining money by false pretences. R. v. Prince, L. R. 1 C. C. R. 150.

The charge of false pretences can be sustained as well where money is obtained or a note procured to be given through the medium of a contract as when they are obtained and procured to be given without any contract.

The defendant by untrue representations made with knowledge that they were untrue induced the prosecutor to sign a contract to pay $240, for seed wheat. The defendant also represented that he was the agent of H. whose name appeared in the contract. H. afterwards called upon the prosecutor and procured him to sign and deliver to him a promissory note in his (H.'s) favour for the $240. The contract did not provide for the giving of a note and when the representations were made the giving of a note was not mentioned The prosecutor however swore that he gave the note because he had entered into the contract. The defendant was indicted for that he by false pretences fraudulently induced the prosecutor to write his name upon a paper so that it might be afterwards dealt

with as a valuable security and in a second count for false pretences by procuring the prosecutor to deliver to H. a certain valuable security. The court held upon a case reserved that the same false pretence which operated on the prosecutor's mind to induce him to enter into the contract, also operated on his mind to induce him to give the note, and that the fact that the prosecutor gave a note instead of money by agreement with H. did not relieve the prisoner from the consequences of his fraud, because the giving of the note was the direct result of the fraud by which the contract had been procured, and that the defendant was properly convicted under s. 360 of the Code. It was also 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 that the conviction of the defendant upon the second count could not be maintained. R. v. Rymal, 17 O. R. 227.

See s. 359 of the Code, as to a contract; see also s. 3*cc* p. 36 as to the meaning of the expression "valuable security."

Prior to the passing of the Code it was held that the execution of a contract between the same parties does not secure from punishment, the obtaining of money by false pretences in conformity with that contract. R. v. Meakin, 11 Cox, 270. And where A. applied to B. for a loan upon the security of a piece of land, and falsely and fraudulently represented that a house was built upon it, and B. advanced money upon A. signing an agreement for a mortgage, depositing his lease and executing a bond as collateral security, it was held that he was properly convicted of obtaining money under false pretences. R. v. Burgon, 7 Cox, 131.

Where a man is soliciting subscriptions which are to be applied to several purposes he must fully disclose them to the subscriber. Thus where the prisoner obtained a subscription to a fireman's fund concealing the fact that one third only of the amount was to go to the fund and the subscriber deposed that he would not have subscribed if this fact had been disclosed to him, it was held that the money was obtained by false pretences. R. v. Ford, 7 Mont. L. R. Q. B. 418.

The crime of obtaining goods by false pretences is complete, although at the time when the prisoner made the pretence and obtained the goods he intended to pay for them when it should be in his power to do so. R. v. Naylor, L. R. 1 C. C. R. 4.

The property obtained need not necessarily be in existence at the time the pretence is made if its subsequent delivery is directly connected with the false pretence. R. v. Martin, L. R. 1 C. C. R. 56.

Where possession only and not the property in the thing is parted with in consequence of the false pretence, it is larceny. R. v. Radcliffe, 12 Cox, 474. See also R. v. Twist, 12 Cox, 509.

The word "obtain" in the Act does not mean obtain the loan of, but obtain the property in any chattel, and to constitute an obtaining by false pretence it is essential that there should be an intention to deprive the owner wholly of the property in the chattel, and an obtaining by false pretences the *use* of a chattel for a limited time only, without an intention to deprive the owner wholly of the chattel is not an obtaining by false pretences within this section. R. v. Kilham, L. R. 1 C. C. R. 261.

Under s. 616 (2) of the Code it is not necessary to set out in detail in what the false pretences consisted.

In false pretences, the property is obtained with the consent of the owner, the latter intending to part with his property, but the intention is induced by fraud. It therefore necessarily differs from larceny in the fact that the property in the chattel passes to the person obtaining it, and it may, though perhaps not necessarily, differ from larceny in this, that the owner is induced to voluntarily part with his property in consequence of some false pretence of an existing fact made by the person obtaining the chattel. But the crime of obtaining money by false pretences is similar to larceny in this, that in both offences there must be an intention to deprive the owner wholly of his property in the chattel. See R. v. Kilham, L. R. 1 C. C. R. 261. See however, Code, s. 305.

FELONY AND MISDEMEANOUR.

After the commencement of this Act the distinction between felony and misdemeanour shall be abolished, and proceedings in

respect of all indictable offences (except so far as they are herein varied) shall be conducted in the same manner. Code, s. 535.

Every Act shall be hereafter read and construed as if any offence for which the offender may be prosecuted by indictment (howsoever such offence may be therein described or referred to), were described or referred to as an "indictable offence"; and as if any offence punishable on summary conviction were described or referred to as an "offence"; and all provisions of this Act relating to "indictable offences" or "offences" (as the case may be) shall apply to every such offence.

Every commisson, proclamation, warrant or other document relating to criminal procedure, in which offences which are indictable offences or offences (as the case may be) as defined by this Act are described or referred to by any names whatsoever, shall be hereafter read and construed as if such offences were therein described and referred to as indictable offences or offences (as the case may be). Code, s. 536.

FERRIES.

The R. S. C. c. 97, enables the Governor-in-Council to make regulations in regard to ferries, and imposes penalties on persons interfering with ferry rights, and all fines or penalties are recoverable in a summary manner before any one justice of the peace, on the oath of any credible witness other than the informer. *Ib.* s. 9.

FERTILIZERS.

The Act respecting agricultural fertilizers, 53 V. c. 24, s. 14, imposes penalties on any person who sells or exposes for sale any fertilizer in respect of which the provisions of the Act have not been complied with. Every person who forges or utters or uses, knowing it to be forged, any manufacturers' certificate, bill of inspection, certificate of analysis, or inspectors' tag, required under the Act, is guilty of a misdemeanour. *Ib.* s. 15.

FIRE ARMS.

Section 102 of the Code makes it an indictable offence to have in possession or carry any offensive weapons for any purpose dan-

gerous to the public peace. See also R. S. C. c. 149, ss. 5 and 7; and as to the time within which prosecutions must be brought, see Code, s. 551 (*d*) (iii).

The expression "offensive weapon" includes any gun or other firearm, or air-gun, or any part thereof, or any sword, sword blade, bayonet, pike, pike-head, spear, spear-head, dirk, dagger, knife, or other instrument intended for cutting or stabbing, or any metal knuckles, or other deadly or dangerous weapon, and any instrument or thing intended to be used as a weapon, and all ammunition which may be used with or for any weapon. R. S. C. c. 151, s. 1 (*c*); Code, s. 3 (*e*).

Various other acts of a like nature are prohibited by ss. 103 to 119.

By section 107 it is provided that every one who when arrested, either on a warrant issued against him for an offence or while committing an offence, has upon his person a pistol or air-gun is guilty of an offence and liable, on summary conviction before two justices of the peace, to a penalty not exceeding fifty dollars and not less than twenty dollars, or to imprisonment for any term not exceeding three months, with or without hard labour. R. S. C. c. 148, s. 2.

It would seem that proceedings under this section should only be taken after conviction for the offence. For instance, suppose a prisoner is convicted of an assault, and the evidence shows that he had a pistol on his person when arrested for the assault, it would be proper after conviction for the assault to proceed under this section, but to proceed first under this section on an alleged offence does not seem to be warranted. See as to search warrant in such case. Code, s. 569 (9).

FISHERIES.

The R. S. C. c. 95, contains various provisions on this subject. Penalties imposed may be recovered on parol complaint before a stipendiary magistrate or justice of the peace in a summary manner, on the oath of one credible witness. *Ib.* s. 19. In certain cases a summons may issue returnable immediately. *Ib.* s-s. 2. The forms in the schedule to the Act may be used when applicable,

and the "Summary Convictions Act" shall apply to proceedings under the Act. *Ib.* s. 20; see 52 V. c. 24, and 54 & 55 V. c. 43.

Section 8 of the Act provides that in New Brunswick salmon shall not be fished for, caught or killed between the 15th August and the first March. In order to convict a person under this section it is not sufficient to show that he had a salmon in his possession on the 20th August. There must be some evidence to show when, where and in what manner the fish had been caught. *Ex parte*, Kelly, 29 S. C. N. B. 271.

In a conviction for an offence under s-s. 2 of s. 14 of the "N. B. Fisheries Act," 31 V. c. 60, which does not provide any mode of enforcing the penalty, the form of conviction given by s. 859 of the Code, awarding distress for non-payment of the fine and in default thereof imprisonment must be adopted and not the form given in the schedule to the "Fisheries Act," the latter being intended to apply to other offences thereunder. *Ex parte*, Freeze, 26 S. C. N. B. 204; following R. v. Sullivan, 24 S. C. N. B. 149.

FOOD—NEGLECTING TO PROVIDE.

(*See* MAINTENANCE.)

FOOD—SELLING WHAT IS UNFIT FOR.

Every one is guilty of an indictable offence and liable to one year's imprisonment who knowingly and wilfully exposes for sale, or has in his possession with intent to sell, for human food articles which he knows to be unfit for human food.

Every one who is convicted of this offence after a previous conviction for the same crime shall be liable to two years' imprisonment. Code, s. 194.

FORCIBLE ENTRY OR DETAINER.

Forcible entry is where a person, whether entitled or not, enters in a manner likely to cause a breach of the peace, or reasonable apprehension thereof, on land then in actual and peaceable possession of another.

Forcible detainer is where a person in actual possession of land, without colour of right, detains it in a manner likely to cause a

breach of the peace, or reasonable apprehension thereof, against a person entitled by law to the possession thereof.

What amounts to actual possession or colour of right is a question of law.

Every one who forcibly enters or forcibly detains land is guilty of an indictable offence and liable to one year's imprisonment. Code, s. 59.

This offence was a misdemeanour at common law, and an indictment will lie for it if accompanied by such circumstances as amount to more than a bare trespass and constitute a public breach of the peace. R. v. Wilson, 8 T. R. 357. See also R. v. Martin, 10 L. C. R. 435.

The statutes 8 Hy. IV. c. 9; 8 Hy. VI. c. 9; 6 Hy. VIII. c. 9, and 21 Jac. 1, c. 15 as to forcible entries seem to be in force in this country. Boulton v. Fitzgerald, 1 Q. B. (Ont.) 343; R. v. McGreavy, 5 O. S. 620.

Under these statutes the party aggrieved by a forcible entry and detainer, or a forcible detainer, may proceed by complaint made to a local justice of the peace, who will summon a jury and call the defendant before him, and examine witnesses on both sides if offered, and have the matter tried by a jury. Russell v. Loyd, 14 L. C. R. 10.

A mere trespass will not support an indictment for forcible entry, there must be such force or show of force as is calculated to prevent any resistance. R. v. Smyth, 1 M. & Rob. 155.

The object of prosecutions for forcible entry is to repress high-handed efforts of parties to right themselves. R. v. Connor, 2 P. R. (Ont.) 140.

And a party may be guilty of forcible entry by violently and with force entering into that to which he has a legal title. Newton v. Harland, 1 M. & Gr. 644.

Where a person having the legal title to land is in actual possession of it, the attempt to eject him by force brings the person who makes it within the provisions of the statute against forcible entry. It will do so though the possession of the person, having such legal title, has only just commenced, though he may himself have obtained it by forcing open a lock, though his ejection has not

been made by a "multitude" of men, not attended with any great use of violence, and though the person who attempts to eject him may even set up a claim to the possession of the land. Laws & Telford, L. R. 1 App. Cas. 414.

FOREIGN ENLISTMENT OFFENCES.

The Imperial Statute, 33 and 34 V. c. 90, governs offences of this character throughout the Dominion and the adjacent territorial waters. See statutes of 1872.

It would seem that the equipment forbidden by s. 8, s-s. 3, of this Act, is an equipment of a warlike character, by means of which the ship, on leaving Her Majesty's Dominions, shall be in a condition to cruise or commit hostilities. See Attorney-General v. Sillem, 10 Jur. N. S. 262.

A warrant of commitment recited that M. was charged on the oath of W., "for that he, M., was this day charged with enlisting men for the United States army, offering them $350 each, as a bounty," without charging any offence with certainty, without stating that the men enlisted were subjects of Her Majesty, and without showing that W. was unauthorized by license of Her Majesty to enlist, was held bad. *Re* Martin, 10 U. C. L. J. 130.

FORGERY.

Forgery is the making of a false document, knowing it to be false, with the intention that it shall in any way be used or acted upon as genuine, to the prejudice of any one whether within Canada or not, or that some person should be induced, by the belief that it is genuine, to do or refrain from doing anything, whether within Canada or not.

Making a false document includes altering a genuine document in any material part, and making any material addition to it or adding to it any false date, attestation, seal or other thing which is material, or by making any material alteration in it, either by erasure, obliteration, removal or otherwise.

Forgery is complete as soon as the document is made with such knowledge and intent as aforesaid, though the offender may

not have intended that any particular person should use or act upon it as genuine, or be induced, by the belief that it is genuine, to do or refrain from doing anything.

Forgery is complete although the false document may be incomplete, or may not purport to be such a document as would be binding in law if it be so made as, and is such, as to indicate that it was intended to be acted on as genuine. Code, s. 422.

The expression "false document" means—

(*a*) a document the whole or some material part of which purports to be made by or on behalf of any person who did not make or authorize the making thereof, or which, though made by, or by the authority of, the person who purports to make it is falsely dated as to time or place of making, where either is material; or

(*b*) a document the whole or some material part of which purports to be made by or on behalf of some person who did not in fact exist; or

(*c*) a document which is made in the name of an existing person, either by that person or by his authority, with the fraudulent intention that the document should pass as being made by some person, real or fictitious, other than the person who makes or authorizes it.

It is not necessary that the fraudulent intention should appear on the face of the document, but it may be proved by external evidence. Code, s. 421. See also ss. 419-420.

Cases not provided for by the statute may still be punished at common law. The offence is defined as the fraudulent making or alteration of a writing to the prejudice of another man's right. *Re* Smith, 4 P. R. (Ont.) 216, or the making of a false document with intent to defraud. R. v. Bail, 7 O. R. 228.

Forgery is the falsely making or altering a document to the prejudice of another, by making it appear as the document of that person, and a simple lie reduced to writing is not necessarily forgery. Consequently, where a bank clerk made certain false and fictitious entries in the bank books under his control for the purpose of enabling him to obtain money of the bank improperly, it

was held that he was not guilty of forgery. R. v. Blackstone, 4 M. L. R. 296.

The instrument forged must have some apparent validity, that is, it must purport on the face of it to be good and valid for the purpose for which it is created, and not be illegal in its very frame, though it is immaterial whether if genuine it would be of validity or not. R. v. Brown, 3 Allen, 13; R. v. Pateman, R. & R. 445.

An instrument which is declared by law to be wholly void, is not the subject of forgery if on its face it affords evidence that it comes within the law declaring it void. Taylor v. Golding, 28 Q. B. (Ont.) 198, 203.

Where the prisoner accepted a bill of exchange, which had no drawer's name, and endorsed a fictitious name on the back of it, this was holden not to be forgery under the statute, though it might be at common law. R. v. Harper, L. R. 7 Q. B. D. 78. But this decision was on the ground that the bill was wholly void, and if the bill had a drawer's name accepting it in the name of a fictitious person with intent to defraud, would be forgery. R. v. White, 2 F. & F. 554. So the addition of a false address without the knowledge of the acceptor and passing it off as the acceptance of another person would, it seems, come within the statute. R. v. Epps, 4 F. & F. 81. When the instrument, such as a cheque, is valid, forging and uttering an endorsement with a view to get it cashed by the credit of the name, comes within the statute. R. v. Wardell, 3 F. & F. 82.

Forgery of an instrument purporting to be a promissory note may be committed, whether the name signed to it is that of an existing or a fictitious person, provided the name is assumed for a fraudulent purpose. *Ex parte* Cadby, 26 S. C. N. B. 452.

Where in an instrument, in the form of a promissory note, a blank is left for the payee's name, it is not a completed note, so as to support a conviction for the forgery thereof, or for the forgery of an endorsement thereon; neither was it a document or writing within the 46th and 47th sections of the R. S. C. c. 165. R. v. Cormack, 21 O. R. 213.

IMAGE EVALUATION
TEST TARGET (MT-3)

6″

If the alleged promissory note has no maker's name thereto, and is consequently not legally a promissory note, a party cannot be convicted for forging an endorsement thereon, nor could a party be convicted for uttering in such case, unless the uttering took place after the maker's name was signed to the note. R. v. McFee, 13 O. R. 8.

A prisoner charged with forging a bond may be convicted, though it purports to contain the signatures of several other joint and several obligors, and there is no evidence to show whether the other signatures are genuine or not. R. v. Deegan, 6 M. L. R. 81.

Forging or uttering in Canada a writing purporting to be a bank note issued by a banking company in the State of Maine, amounts to the crime of forgery, though it is not proved that the company had power by charter to issue notes of that description, it being shown that the note carried on its face the semblance of a bank note issued by a company in the State of Maine, and there being nothing in its frame to show it illegal. R. v. Brown, 3 Allen, 13. It is sufficient if the instrument is in such form as to deceive persons of ordinary observation. R. v. Callicott, R. & R. 212.

At common law and independently of the provisions of the statute, the forgery must be of some document or writing, therefore the painting an artist's name in the corner of a picture, in order to pass it off as an original picture by that artist, is not forgery. R. v. Closs, 21 L. J. M. C. 54. But any instrument designated in the statute is now the subject of forgery.

As to the fabrication, it need not be of the whole instrument. Very frequently the only false statement is the use of a name to which the defendant is not entitled. It does not matter whether the name wrongly applied be a real or fictitious one. R. v. Lockett, 1 Leach, 94. Even to make a mark in the name of another person with intent to defraud that person is forgery. R. v. Dunn, 1 Leach, 57. It is forgery within the meaning of s. 423 (*u*) of the Code, to make a deed fraudulently with a false date, when the date is a material part of the deed, although the deed is in fact made and executed by and between the persons by and between whom it purports to be made and executed. R. v. Ritson, L. R. 1 C. C. R. 200.

Not only a fabrication but even an alteration, however slight, if material, will constitute forgery. See Code, s. 422 (2). A person having an order for the delivery of wheat for the support of poor persons in a municipality is guilty of forgery, if with intent to defraud he materially alters the order so as to increase the quantity of wheat obtainable thereunder. R. v. Campbell, 18 Q. B. (Ont.) 416.

And the alteration of a $2 Dominion note to one of the denomination of $20, such alteration consisting in the addition of a cypher after the figure 2 wherever that figure occurred in the margin of the note, is forgery, though the body or obligatory part of the note has not been altered, but the note merely given the appearance of one of a larger denomination. R. v. Bail, 7 O. R. 228.

It is forgery to execute a deed in the name of and as representing another person, with intent to defraud, even though the prisoner has a power of attorney from such person, but fraudulently conceals the fact of his being only such attorney, and assumes to be principal. R. v. Gould, 20 C. P. (Ont.) 159.

It must be proved that the alleged forgery was intended to represent the handwriting of the person whose handwriting it appears to be, and is proved not to be, or that of a person who never existed. The person whose name is forged is a competent witness, but his evidence requires corroboration. Code, s. 684. R. v. McDonald, 31 Q. B. (Ont.) 337; R. v. Giles, 6 C. P. (Ont.) 84; see *ante*, p. 409. Whether he be or be not called as a witness, the handwriting may be proved not to be his by any person acquainted with his handwriting, either from having seen him write, or from being in the habit of corresponding with him. The instrument must be made with intent to defraud, which is the chief ingredient of the offence. It is not, however, necessary to prove an intent to defraud any particular person; it is sufficient to prove that the party accused did the act charged with intent to defraud. As there must be evidence of an intent to defraud, the writing of a signature in sport without any intention to defraud, or pass it off as genuine, is not forgery. A man may draw a promissory note for any sum he pleases, and in favour of any per-

son, and payable to him or to his order, or to bearer, and so long as it remains simply as *his own* promissory note, in his own possession, and charging no other person but himself with liability, he may alter it at his own free will in all or any particulars. But when another person becomes interested in the note, or discounts it, or receives it in payment, it is then fraud and forgery to pass it off as containing the names of persons who have not in fact signed or endorsed it. See R. v. Craig, 7 C. P. (Ont.) 239; R. v. Dunlop, 15 Q. B. (Ont.) 119. It is the intent to deceive and defraud that the law considers criminal, but where this intent exists, it is immaterial whether any person is actually defrauded by the forgery, or that any person should be in a situation to be defrauded by the act. R. v. Nash, 21 L. J. M. C. 147.

An authority to use the name which is alleged to be forged, will of course justify the prisoner. R. v. Smith, 3 F. & F. 504.

In all forgeries, the instrument supposed to be forged must be a false instrument in itself, and if a person gives a note entirely as his own, his subscribing it by a fictitious name will not make it a forgery, the credit there being wholly given to himself, without any regard to the name or any relation to a third person. R. v. Martin, L. R. 5 Q. B. D. 34. See, however, Code, s. 421 (*b*) & (*c*).

Formerly the offence of forgery was not triable at the Quarter Sessions. R. v. McDonald, 31 Q. B. (Ont.) 337; R. v. Dunlop, 15 Q. B. (Ont.) 118. Now, under s. 540 of the Code it is so.

The offence of *uttering* the forged instrument is provided for by s. 424 of the Code, and made an offence of the same nature as the forgery itself. The words used in the statute are: "uses, deals with, or acts upon," knowing the same to be forged. A tender or attempt to pass off the instrument will be sufficient, and there need not be an acceptance by the other. It is an uttering if the forged instrument is used in anyway, so as to get money or credit by it, or by means of it, though it is produced to the other party, not for his acceptance, but for some other purpose. R. v. Ion, 21 L. J. M. C. 166. Of course, the forged character of the instrument and the intent to defraud must be proved, as in forgery. It will be also necessary to prove that the defendant *knew* the instrument

to be forged, as for instance, by showing that he had in his possession other forged notes of the same kind.

The making on a glass plate a positive impression of an undertaking of a foreign state, for the payment of money, by means of photography, without lawful authority or excuse, is an indictable offence within the Act. R. v. Rinaldi, 9 Cox, 391.

A guarantee is the subject of forgery though no consideration appear. R. v. Cœlho, 9 Cox, 8. This includes post office orders. R. v. Vanderstein, 10 Cox, 177.

A guarantee given on the appointment of an agent to an insurance company, against loss, etc., by negligence, or dishonesty of the agent, is an undertaking for payment of money and the agent may be convicted of forging such a document. R. v. Joyce, 10 Cox, 100.

An I. O. U. is an undertaking for the payment of money. R. v. Chamber, 12 Cox, 109; L. R. 1 C. C. R. 341.

A "clearance" or certificate of payment of dues, given by the secretary of a friendly society, is not an acquittance or receipt for money within this section. R. v. French, L. R. 1 C. C. R. 217.

A document in the following form:

"THORNTON, October, 1867.

"Received of the S. L. B. Soc'y, the sum of £417 13s. on account of my share, No. 8,071.

£417 13s. pp. S. A.

"WM. KAY."

is a warrant, authority, or request, for the payment of money within this section. R. v. Kay, L. R. 1 C. C. R. 257.

An instrument in the following form:

"$3.50. "CARRICK, April 10, 1863.

"John McLean, tailor, please give Mr. A. Steel, to the amount of three dollars and fifty cents, and by so doing you will oblige me.

[Signed] ANGUS McPHIAL."

is an order for the payment of money, and not a mere request. R. v. Steel, 13 C. P. (Ont.) 619.

But an instrument as follows :

"RENFREW, June 13, 1860.

"*Mr. McKay :*

"SIR,—Would you be good enough as for to let me have the loan of $10 for one week or so, and send it by the bearer immediately, and much oblige your most humble servant,

"J. ALMIRAS, P. P."

is not an order for the payment of money. R. v. Reopelle, 20 Q. B. (Ont.) 260.

"*Mr. Warren :*

"Please let the bearer, Mrs. Tuke, have the amount of ten pounds, and you will oblige me

"B. B MITCHELL."

is an order for the payment of money and not a mere request. R. v. Tuke, 17 Q. B. (Ont.) 296.

The 29th section of the former Act applied not only to the forgery of an order for the payment of money, but also by express terms to the forgery of any endorsement on such order. R. v. Cunningham, 6 Russ. & Geld. 31 ; see Code, s. 423.

It appeared that the prisoner had forged an order purporting to be signed by a foreman addressed to his employers, requesting them to pay the person therein named or order a specified sum. This was the mode adopted by the foreman of certifying to his employers that so much was due for wages to the persons named in the orders. The court held the instrument was an order for the payment of money, and a conviction for forging it was affirmed. R. v. Bowen, 7 Mont. L. R. (Q. B.) 468.

A statement such as those in use between banks containing an acknowledgement of moneys received to be accounted for by the bank receiving it, is an "accountable receipt" within the meaning of this section, and the fraudulent alteration of the same is forgery. So a bank deposit book is an accountable receipt. *Re* Debaun, 32 L. C. J. 281. It differs from an acquittance because it not only shows the receipt of money but an obligation to account for it.

Where an alteration is made in a written instrument to conceal a fraud previously committed, such alteration is a forgery, even

although no other fraudulent act was committed at the same time. *Ib.* See further as to forgery, *Re* Sherman, 19 O. R. 315.

Under the "Gas Inspection Act," R. S. C. c. 101, s. 45, every person who forges or counterfeits any certificate purporting to be granted under the Act, or any stamp which under the Act is to be affixed to any such certificate, or wilfully uses any such counterfeited certificate, or stamp, knowing it to be forged or counterfeited, is guilty of forgery, and shall be punished accordingly.

The 4th section of the R. S. C. c. 166, makes the forging or counterfeiting of any trade mark a misdemeanour.

Procedure in criminal matters includes the trial and punishment of the offender, and therefore s. 2 of the (Ont.) 53 V. c. 18, which authorizes police magistrates to try and convict persons charged with forgery is *ultra vires* the Provincial Legislature. R. v. Toland, 22 O. R. 505. But this statute is *intra vires* in so far as it confers power upon the courts of general sessions of the peace. R. v. Levinger, 22 O. R. 690.

As to impounding documents that have been forged or altered see s. 720 of the Code.

FORTUNE-TELLING.

Section 396 of the Code is in substance the same as the statute 9 Geo. II. c. 5, which was held to be in force in Ontario. Under this section every one is guilty of an indictable offence and liable to one year's imprisonment who pretends to exercise or use any kind of witchcraft, sorcery, enchantment or conjuration, or undertakes to tell fortunes, or pretends from his skill or knowledge in any occult or crafty science, to discover where or in what manner any goods or chattels supposed to have been stolen or lost may be found. Code, s. 390.

The mere undertaking to tell fortunes constitutes the offence under this Act, and a conviction was affirmed where it was obtained upon the evidence of a person who was not a dupe or a victim but a mere decoy sent for the purpose of entrapping the prisoner and thereby obtaining evidence. R. v. Milford, 20 O. R. 306.

FOUND COMMITTING OFFENCES.

As to liability to arrest therefor, see s. 552 of the Code, see also *ante*, p. 339.

FRANCHISE.

"The Electoral Franchise Act," R. S. C. c. 5, s. 40, provides that every officer and person, who is by law the custodian of any assessment roll or list of voters, which is required by the revising officer for the purpose of revising any list of voters, is guilty of a misdemeanour if he refuses or omits to furnish the same to the revising officer when applied for.

So under s. 42, every person, who is an agent within the meaning of "The Indian Act," and who either directly or indirectly seeks to induce any Indian to register as a voter or to vote or refrain from voting at any election, is guilty of a misdemeanour. See 53 V. c. 8.

FRAUDULENT CONVEYANCES.

See s. 368 of the Code, *ante*, p. 393.

FRAUDULENT MARKING OF MERCHANDIZE.

As to this offence see Code, ss. 443 to 455. As to the time within which the prosecution must be brought, see Code, s. 551 (*a*) (iii), and as to the evidence on prosecutions, see Code, s. 710; see also 51 V. c. 41; see also trade marks.

FUGITIVE OFFENDERS.

The R. S. C. c. 143, applies to fugitives from justice who have committed crimes in some part of Her Majesty's dominions other than Canada. When such person is or is suspected of being in or on his way to Canada, a magistrate may proceed in the same way as if the offence of which the fugitive is accused had been committed within his own jurisdiction. On finding a strong or probable presumption of guilt the magistrate is required to commit the fugitive to prison to await his return, and must forthwith send a certificate of the committal and such report of the case as he thinks fit to the Governor-General.

FURIOUS DRIVING.

See s. 253 of the Code.

GAME.

In Ontario the 56 V. c. 49 now contains the law on this subject. It is an offence against the Act, to sell or expose for sale in Ontario quail killed and procured outside of Ontario and imported into Ontario, and the Act is constitutional. R. v. Cleghorn, 13 C L. T. 11.

GAMBLING IN PUBLIC CONVEYANCES.

Every one is guilty of an indictable offence and liable to one year's imprisonment who—

(*a*) in any railway car or steamboat, used as a public conveyance for passengers, by means of any game of cards, dice or other instrument of gambling, or by any device of like character, obtains from any other person, any money, chattel, valuable security or property; or

(*b*) attempts to commit such offence by actually engaging any person in any such game with intent to obtain money or other valuable thing from him.

Every conductor, master or superior officer in charge of, and every clerk or employee when authorized by the conductor or superior officer in charge of, any railway train or steamboat, station or landing place in or at which any such offence, as aforesaid, is committed or attempted, must, with or without warrant, arrest any person whom he has good reason to believe to have committed or attempted to commit the same, and take him before a justice of the peace, and make complaint of such offence on oath, in writing.

Every conductor, master or superior officer in charge of any such railway car or steamboat, who makes default in the discharge of any such duty is liable, on summary conviction, to a penalty not exceeding one hundred dollars and not less than twenty dollars.

Every company or person who owns or works any such railway car or steamboat must keep a copy of this section posted up in some conspicuous part of such railway car or steamboat.

Every company or person who makes default in the discharge of such duty is liable to a penalty not exceeding one hundred dollars and not less than twenty dollars. R. S. C. c. 160, ss. 1, 3, and 6. Code, s. 203; see Goodman v. R., 3 O. R. 18.

GAMING HOUSES.

A common gaming-house is—

(*a*) a house, room or place kept by any person for gain, to which persons resort for the purpose of playing at any game of chance; or

(*b*) a house, room or place kept or used for playing therein at any game of chance, or any mixed game of chance and skill, in which—

(i) a bank is kept by one or more of the players exclusively of the others; or

(ii) in which any game is played the chances of which are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the game is managed, or against whom the other players stake, play or bet. Code, s. 196.

Every one is guilty of an indictable offence and liable to one year's imprisonment who keeps any disorderly house, that is to say, any common bawdy-house, common gaming-house or common betting-house, as hereinbefore defined.

Any one who appears, acts, or behaves as master or mistress, or as the person having the care, government or management, of any disorderly house shall be deemed to be the keeper thereof, and shall be liable to be prosecuted and punished as such, although in fact he or she is not the real owner or keeper thereof. Code, s. 198.

Under s. 199, every one who plays or looks on while any other person is playing is guilty of an offence, so it is also an offence to obstruct or prevent any constable or officer from entering such gaming-house. *Ib.* s. 200. As to searching a gaming-house, see s. 575 of the Code, *ante*, p. 73.

Keeping a gambling-house is the same thing as keeping a common gaming-house. Though in the R. S. C. c. 158, the expression used was "common gaming-house." In s. 140 of the R. S. C. c. 174, it was "keeping a gambling-house." R. v. Shaw, 7 M. L. R. 518; Jenks v. Turpin, 13 Q. B. D. 505.

Where a statute imposes a penalty on any person allowing gaming to be carried on in his premises, the mere fact that he does not know of the existence of gaming on his premises does not relieve him of his responsibility and he will be liable although the gaming is carried on by a servant without his knowledge. Bond v. Evans, 16 Cox, 461.

If the prohibition were against wilfully or knowingly carrying on gaming it might be otherwise. *Ib.* See also Dyson v. Mason, 16 Cox, 575.

When any cards, dice, balls, counters, tables or other instruments of gaming used in playing any unlawful game are found in any house, room or place suspected to be used as a common gaming-house, and entered under a warrant or order issued under this Act, or about the person of any of those who are found therein, it shall be *prima facie* evidence, on the trial of a prosecution under section one hundred and ninety-eight, that such house, room or place is used as a common gaming-house, and that the persons found in the room or place where such tables or instruments of gaming are found were playing therein although no play was actually going on in the presence of the chief constable, deputy chief constable or other officer entering the same under a warrant or order issued under this Act, or in the presence of those persons by whom he is accompanied as aforesaid. R. S. C. c. 158, s. 4. Code, s. 702.

It shall be *primâ facie* evidence in any prosecution for keeping a common gaming-house under section one hundred and ninety-eight of this Act that a house, room or place is used as a common gaming-house, and that the persons found therein were unlawfully playing therein:—

(*a*) if any constable or officer authorized to enter any house room or place, is wilfully prevented from, or obstructed or delayed in entering the same or any part thereof; or

(*b*) if any such house, room or place is found fitted or provided with any means or contrivance for unlawful gaming, or with any means or contrivance for concealing, removing or destroying any instruments of gaming. R. S. C. c. 158, s. 8. Code, s. 703.

Keeping a common gaming-house is an indictable offence at common law, and a commitment for unlawfully keeping such house discloses an offence. The cards referred to in the 702nd section must be such as are ordinarily used in playing an unlawful game, but "poker" is not in itself an unlawful game. R. v. Shaw, 4 M. L. R. 404.

The law does not deem it within its province to punish such practices as gaming, unless either some fraud is resorted to, or regular institutions are established for the purpose, so as to amount to a public nuisance.

No rules or practice of any game can make that lawful which is unlawful by the laws of the land, and if, while engaged in a friendly game of football, one of the players commits an unlawful act, whereby death is caused to another, he is guilty of manslaughter. It is immaterial that the act was according to the rules of the game, this fact would only rebut any inference of malice. R. v. Bradshaw, 14 Cox, 83.

In Ontario, the 55 V. c. 42, s. 489, s-s. 36, authorizes the council of every township, city, town or incorporated village, to pass a by-law for suppressing gambling-houses, and for seizing and destroying faro banks, *rouge et noir*, roulette tables and other devices for gambling found therein.

Every one is guilty of an indictable offence and liable to five years' imprisonment, and to a fine of five hundred dollars, who, with the intent to make gain or profit by the rise or fall in price of any stock of any incorporated or unincorporated company or undertaking, either in Canada or elsewhere, or of any goods, wares or merchandise—

(*a*) without the *bona fide* intention of acquiring any such shares, goods, wares or merchandise, or of selling the same, as the case may be, makes or signs, or authorizes to be made or signed, any contract or agreement, oral or written, purporting to be for the

sale or purchase of any such shares of stock, goods, wares or merchandise; or

(*b*) makes or signs, or authorizes to be made or signed, any contract or agreement, oral or written, purporting to be for the sale or purchase of any such shares of stock, goods, wares or merchandise in respect of which no delivery of the thing sold or purchased is made or received and without the *bona fide* intention to make or receive such delivery.

But it is not an offence if the broker of the purchaser receives delivery on his behalf of the article sold, notwithstanding that such broker retains or pledges the same as security for the advance of the purchase money or any part thereof.

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 in 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. 51 V. c. 42, ss. 1 & 3; Code, s. 201.

Whenever, on the trial of a person charged with making an agreement for the sale or purchase of shares, goods, wares or merchandise in the manner set forth in section two-hundred and one, it is established that the person so charged has made or signed any such contract or agreement of sale or purchase, or has acted, aided or abetted in the making or signing thereof, the burden of proof of the *bona fide* intention to acquire or to sell such goods, wares or merchandise, or to deliver or to receive delivery thereof as the case may be, shall rest upon the person so charged. Code, s. 704; see R. v. Murphy, 17 O. R. 201.

GAOLS.

(*See* PRISONS; *see* also R. S. C. c. 182.)

GAS.

Under "The Gas Inspection Act," R. S. C. c. 101, s. 41, every person who, except under the authority of the Act, makes, or knowingly assists in making, or who knowingly forges or counter-

feits any stamp or mark used for the stamping or marking of any meter, under the Act, incurs a penalty not exceeding two hundred dollars, and not less than fifty dollars. And any person knowingly selling, or disposing of any meter, with such forged stamp or mark thereon, incurs a penalty not exceeding two hundred dollars, and not less than twenty dollars.

Under s. 42, heavy penalties are imposed for falsely altering meters, or obstructing their action. So under ss. 43 & 44, it is unlawful to fix any meter for use before it has been stamped and verified, or for an inspector to stamp any meter without duly testing and finding the same correct; and by subsequent sections, penalties are imposed for other offences against the Act, See 53 V. c. 25.

GOVERNMENT HARBOURS, PIERS AND BREAKWATERS.

The R. S. C. c. 84, contains various provisions on this subject, and by s. 6, all pecuniary penalties imposed under the Act may be recovered with costs under the "Summary Convictions Act."

GRIEVOUS BODILY HARM.

Section 241 and following sections of the Code apply to offences of this nature.

A person who fires a loaded pistol at a crowd of people, not aiming at any one in particular, but intending generally to do grievous bodily harm, and severely wounds one of the group, may be convicted of the indictable offence of shooting and wounding the person injured, with intent to do grievous bodily harm. R. v. Fretwell, 9 Cox, 471.

To constitute grievous bodily harm it is not necessary that the injury should be either permanent or dangerous; if it be such as seriously to interfere with comfort or health, it is enough. R. v. Ashman, 1 F. & F. 88.

HARBOUR MASTERS.

The R. S. C. c. 86, enables the Governor-in-Council to appoint Harbour Masters, and to make regulations defining their rights, powers and duties, and the penalty imposed by any such regulation may be recovered under "The Summary Convictions Act." *Ib.* s. 17.

HAWKERS.

In Ontario, the 55 V. c. 42, s. 495, empowers the council of any county, city and town, separated from the county, to pass by-laws "for licensing hawkers or petty chapman," etc. Sub-section 3 (*a*), enacts that the word "hawkers" shall include all persons who being agents for persons not resident within the county, sell or offer for sale, tea, dry-goods, watches, plated ware, silver ware or jewellery, or carry and expose samples or patterns of any such goods, to be afterwards delivered within the county to any person not being a wholesale or retail dealer in such goods, wares or merchandize. Parties may take their arrangements out of the terms and scope of the by-law if they please, and a person who buys goods as an independent trader is not necessarily an agent within this statute, because he becomes such for the purpose of evading the by-law, so long as the agency does not, in fact, exist. R. v. McNicol, 11 O. R. 659.

It is no offence under this clause to expose samples of cloth and solicit orders for clothing, to be afterwards manufactured from such cloth, and to be then delivered to the persons giving such orders. The term "dry goods," does not include clothing ordered to be manufactured from cloths, samples of which are exposed with a view to solicit orders for such clothing. R. v. Bassett, 12 O. R. 51. Under the same Act a member of a firm carrying and exposing samples or making sales of tea, is not within the restriction preventing "agents for persons not resident within the county" from so doing, and is not such an agent. R. v. Marshall, 12 O. R. 55.

Electro-type ware was not jewellery within the R. S. C. c. 184, s. 495, s-s. 3, and a conviction for selling such ware without license was held bad, and liable to be quashed though the fine had been paid. R. v. Chayter, 11 O. R. 217.

The words "other goods, wares and merchandize," in a conviction are too general, and the kind of goods ought to be shown. *Ib.* See *ante*, p. 176.

Since the case of R. v. Coutts, 5 O. R. 644, "The Municipal Act" has been amended so as to extend to agents. See 55 V. c.

42, s. 495, s-s. 3 (*a*). But though the amendment applies to the case of an agent it does not meet that of the principal himself. Thus where 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 the county of W., and the packages of tea subsequently delivered, all the teas were sent in one parcel to the county of H. and there distributed. It was held that a conviction of the defendant for carrying on a petty trade could not be sustained, for the defendant was not carrying goods for sale, and as the defendant could not be classed as a "hawker" within the meaning of the Act he was not liable for offering goods for sale by sample. R. v. Henderson, 18 O. R. 144.

HIGHWAYS.

(*See* NUISANCES.)

HOLES AND EXCAVATIONS.

Every one is guilty of an offence and liable, on summary conviction, to a fine or imprisonment with or without hard labour (or both) who—

(*a*) cuts or makes, or causes to be cut or made, any hole, opening, aperture or place, of sufficient size or area to endanger human life, through the ice on any navigable or other water open to or frequented by the public, and leaves such hole, opening, aperture or place, while it is in a state dangerous to human life, whether the same is frozen over or not, uninclosed by bushes or trees or unguarded by a guard or fence of sufficient height and strength to prevent any person from accidentally riding, driving, walking, skating or falling therein ; or

(*b*) being the owner, manager or superintendent of any abandoned or unused mine or quarry or property upon or in which any excavation has been or is hereafter made, of a sufficient area and depth to endanger human life, leaves the same unguarded and uninclosed by a guard or fence of sufficient height and strength to prevent any person from accidentally riding, driving, walking or falling thereinto ; or

(c) omits within five days after conviction of any such offence to make the enclosure aforesaid or to construct around or over such exposed opening or excavation a guard or fence of such height and strength.

Every one whose duty it is to guard such hole, opening, aperture or place is guilty of manslaughter if any person loses his life by accidentally falling therein while the same is unguarded R. S. C. c. 162, ss. 20, 30, 31 and 32. Code, s. 255.

HOMICIDE.

(*See* MURDER.)

HOUSE BREAKING.

(*See* BURGLARY.)

HUSBAND NEGLECTING TO MAINTAIN.

(*See* MAINTENANCE.)

ICE, LEAVING HOLES IN

(*See ante*, p. 454.)

IGNORANCE.

The fact that an offender is ignorant of the law is not an excuse for any offence committed by him. Code, s. 1[4]

Though a mistake or ignorance of law is no defence for a party charged with a criminal act, it may be ground for an application to the merciful consideration of the Government. R. v. Madden, 10 L. C. J. 344.

Ignorance or mistake of fact may in some cases be a defence, as for instance, if a man intending to kill a thief in his own house, kill one of his own family, he will be guilty of no offence. But if intending to do grievous bodily harm to A., he in the dark kill B., he will be guilty of murder, the exemption from liability proceeding on the assumption that the original intention was lawful. So a man is not liable for an accident which happens in the performance of a lawful act, with due caution. For example, A. properly pursuing his work as a bricklayer, lets fall a brick on B's. head, and the latter dies in consequence of the injury, A. will not be liable,

but it would have been otherwise, had A. at the time been engaged in some criminal act, or if he had not exercised proper skill or care.

IMMIGRATION.

The R. S. C. c. 65, contains numerous provisions for the protection of immigrants. By s. 30 they are not allowed to be solicited except by licensed persons, under a penalty not less than fifty dollars. The seduction of any female immigrant by the master, officer, seaman or other employee of any vessel, while such vessel is in Canadian waters, is a misdemeanor, *Ib.* s. 36. By s. 42, s-s. 3, every violation of the provisions of the Act, where the penalty exceeds forty dollars, is a misdemeanor. A summons may be issued by one justice of the peace, but a conviction can only be made by two such justices. *Ib.* ss. 41 and 42.

IMPRISONMENT.

Every person convicted of any indictable offence for which no punishment is specially provided, shall be liable to imprisonment for seven years.

Every one who is summarily convicted of any offence for which no punishment is specially provided, shall be liable to a penalty not exceeding fifty dollars, or to imprisonment, with or without hard labour, for a term not exceeding six months, or to both. R. S. C. c. 181, s. 24. Code, s. 951. And by s. 955, s-s. 7 of the Code, the term of imprisonment, in pursuance of any sentence, shall, unless otherwise directed in the sentence, commence on and from the day of passing such sentence, but no time during which the convict is out on bail shall be reckoned as part of the term of imprisonment to which he is sentenced. And when an offender is convicted of more offences than one before the same court or person at the same sitting, or when any offender under sentence or undergoing punishment for one offence is convicted of any other offence, the court or person passing sentence may on the last conviction direct that the sentences passed upon the offender for his several offences shall take effect one after another. Code, s. 954. See also s. 877.

The period of imprisonment runs from the time when the prisoner is received by the gaoler, not from the time of his arrest where there is an interval of a day or more between the arrest and the lodgment in gaol pursuant to a sentence. Henderson v. Preston, 16 Cox, 445.

A mere accidental error in pronouncing sentence is not sufficient ground for discharging a prisoner. A prisoner was convicted of larceny and sentenced to one year's imprisonment in Dorchester penitentiary. The warden refused to receive him on the ground that the shortest period for which prisoners could be sentenced to, or received at the penitentiary, was two years. Prisoner was then taken to the county gaol. On a motion for *habeas corpus*, the jailer in his return set out the conviction for larceny, and also returned that the prisoner was detained under a warrant of a justice for attempting to escape by tearing up the floor of his cell. The warrant annexed to the return was under the hand of two justices. The court refused to discharge him, and decided that he should be sentenced to imprisonment in the common gaol for one year, inclusive of the period for which he had already been detained. *Re* Rice, 2 Russ. & Geld. 77.

The general rule that the period of imprisonment in pursuance of any sentence, commences on and from the day of passing such sentence, does not suffer exception where the defendant is allowed to go at large after sentence without bail, and therefore where a defendant was allowed to go at large until the term of the sentence had expired, his commitment subsequently was held to be illegal. *Ex parte* Gervais, 6 L. N. 116.

Where a prisoner sentenced to six months imprisonment was allowed to remain at liberty until fourteen days before the expiry of the original period of imprisonment, his commitment then was held valid for the remaining fourteen days only, and not for six months from the date of the commitment. *Re* Hénault, 6 L. N. 121.

A warrant should state the day a prisoner is sentenced, otherwise the time when the imprisonment commences and expires is uncertain. *Ex parte* Stather, 25 S. C. N. B. 374.

INDECENCY.

See as to this ss. 177 and 178 of the Code.

Every one commits a misdemeanour, who does any grossly indecent act in any open and public place in the presence of more persons than one; Elliot's case, L. & C. 103. But it is uncertain whether such conduct in a public place amounts to a misdemeanour, if it is done when no one is present, or in the presence of one person only.

In order to support an indictment for indecent exposure in a public place, it is sufficient to show that the offence was committed in a place where an assembly of the public is collected, even though they have no legal right of access thereto. R. v. Wellard, 15 Cox, 559.

A place is public if it is so situated, that what passes there can be seen by any considerable number of persons, if they happen to look. Webb's case, 1 Den. 338; R. v. Orchard, 3 Cox, 248.

Thus the inside of a urinal open to the public, and by the side of a foot path in Hyde Park is a public place. R. v. Harris, L. R. 1 C. C. R. 288.

It is unlawful for men to bathe without any screen or covering so near to a public footway frequented by females, that exposure of the person must necessarily occur, and they who so bathe are liable to an indictment for indecency. R. v. Reed, 12 Cox, 1.

It is not necessary that the exposure should be made in a place open to the public. If the act be done where a great number of persons may be offended by it and several see it, it is sufficient. R. v. Thallman, 33 L. J. M. C. 58.

Printing or publishing indecent or obscene books, prints or pictures, is a misdemeanour at common law, and punishable with fine or imprisonment or both. R. v. Curl, 2 Str. 788, and it is no defence that the object was not corrupt. R. v. Hicklin, L. R. 3 Q. B. 360.

Keeping a booth on a public race-course, for the purpose of showing an indecent exhibition is an offence at common law. R. v. Saunders, L R. 1 Q. B. D. 15.

INDECENT ASSAULTS.

(*See* ASSAULTS.)

See also ss. 177 and 178 of the Code.

INDIANS.

Section 98 of the Code makes it an indictable offence to incite any three or more Indians, non-treaty Indians or half-breeds to riotous acts. Section 190 relates to the prostitution of Indian women and section 352 makes it an offence to steal or injure any article deposited in or near any Indian grave. For other statutory provisions see R. S. C. c. 43. Sections 111 and 106, s-s. (2) of the latter Act have been repealed by the Code. See Code, s. 981, sched. two. The R. S. C. c. 43, has been amended by the 51 V. c. 22, the 53 V. c. 29 and the 54 & 55 V. c. 30.

The word "hay" used in s. 26 of the R. S. C. c. 43, 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. R. v. Good, 17 O. R. 725.

To obviate the difficulty as to Indian names, s. 28 of the R. S. C. c. 43, provides that it shall not be necessary to insert or express the name of the person or Indian summoned, arrested or proceeded against except where the name of such person or Indian is truly given to or known by the magistrate. In the latter case, he may name or describe the person or Indian by any part of the name given to or known by him, and if no such part is known he may be described in any manner by which he may be identified. The Summary Convictions Act supplies the procedure on the prosecution of the various offences under the Act. See ss. 67, 76.

Section 94 of the Act as amended by the 51 V. c. 22, s. 4, creates severe punishment for furnishing intoxicants to Indians. The functionary convicting under this section must be appointed to exercise his jurisdiction within some prescribed area, and if an Indian agent only, it must be shown that the Indians to whom liquor is sold were Indians over whom the agent had jurisdiction. R. v. McCauley, 14 O. R. 643.

This section provides that the punishment for selling liquor to Indians may be imprisonment, *or* fine, or fine *and* imprisonment, but does not provide for a fine and imprisonment in default of payment of the fine. R. v. Mackenzie, 6 O. R. 165. Where therefore a conviction for giving intoxicating liquor to an Indian, imposed a fine and costs and in default of immediate payment, imprisonment, the conviction was held invalid, and that the defect was not remedied by s. 125, which enacts that no prosecution, conviction, etc., under the Act shall be invalid on account of want of form so long as the same is according to the true meaning of the Act. *Ib.*

Imprisonment may be imposed under this section as a substantive punishment, but it would seem that it cannot be awarded in case of immediate non-payment of a fine where a fine is imposed under this section. Imprisonment may be adjudged under s. 95, where the offence is selling liquor to Indians on board a vessel. Where a fine is imposed under s. 94 the conviction must follow the form VV in s. 859 of the Code, and award distress in default of payment of the fine. *Ex parte* Goodine, 25 S. C. N. B. 151.

A conviction under this statute directed the payment of a fine and in default of payment a distress, and if no goods, imprisonment, and it was held that the conviction was not bad, although by it the jurisdiction to direct a distress, and imprisonment might be prematurely exercised. R. v. Galbraith, 6 M. L. R. 14.

Under this Act and legislation incorporated therewith there is no power to include in the conviction the costs of commitment and conveying to gaol. R. v. Good, 17 O. R. 725. See now s. 872 (*a*) of the Code; *ante*, pp. 208-211.

Land leased by the Crown is not a reserve or special reserve, and it is only to sales of liquor on reserves or special reserves that the prohibition contained in s. 94 applies.

In the case of such leased land, a prosecution for selling liquor should be under the Liquor License Act. R. v. Duquette, 9 P. R. (Ont.) 29.

A man who sells liquor to an Indian is guilty of two offences, and may be convicted of selling under the R. S. O. c. 194, as well as under the Indian Act. R. v. Young, 7 O. R. 88.

It is not necessary that the conviction should show whether the offender is a white man or an Indian. Where the conviction alleged that the offence was committed on the 29th September, 1887, and the information and evidence showed that it was on the 27th, the variance was held immaterial. R. v. Green. 12 P. R. (Ont.) 373.

The words "appeal brought," in s. 108 of the Act, are satisfied by the giving of notice and perfecting the appeal by the giving of the security provided for by s. 880 of the Code, and it is not necessary for an appellant from a conviction under "The Indian Act," to bring his appeal to a hearing within the time limited by the 108th section. R. v. McCauley, 12 P. R. (Ont.) 259. *Re* Hunter v Griffiths, 7 P. R. (Ont.) 86, not followed.

A visiting superintendent and commissioner of Indian Affairs, for the Brant and Haldimand Reserve, has jurisdiction, under the statutes relating to Indian Affairs, to act as a justice of the peace in the matter of a charge against the plaintiff for unlawfully trespassing upon and removing cordwood from the Indian Reserve in the County of Brant. Hunter v. Gilkinson, 7 O. R. 735.

INDICTABLE OFFENCES.

All crimes involve the elements of *will, criminal intention,* or *malice.* To make a person a criminal, the intention must be a state of mind forbidden by the law. For instance, a person innocently uttering a forged note, not intending to defraud, commits no crime. When the law expressly declares an act to be criminal, the question of intention or malice need not be considered. Malice is found not only in cases where the mind is actively or positively at fault, as where there is a deliberate design to defraud, but also where the mind is passively or negatively to blame—that is, where there is culpable or criminal inattention or negligence. It is usual to lay down that malice is either *express* or *in fact,* as when a person with a deliberate mind and formed design kills another; (2) *Implied* or *in law,* as where one wilfully poisons another, though no particular enmity can be proved, or where one gives a perfect stranger a blow likely to produce death. Here there is a

wilful doing of a wrongful act without lawful excuse, and the intention is an inference of law resulting from the doing the act. The law infers that every man intends the necessary consequence of his own act. Malice in its ordinary sense of ill-will or malevolence, is not essential to a crime; malice in its legal signification of criminal intention is. For instance, legal malice may constitute homicide, murder, though there may be an entire absence of ill-will; where there is ill-will or malevolence, homicide, which would otherwise be manslaughter, is constituted murder. Intention sometimes determines the criminality of an act. For instance, A. takes a horse from the owner's stables without his consent. If he intend to fraudulently deprive the owner of the property, and appropriate the horse to himself, he is guilty of the crime of larceny; if he intend to use it for a time and then return it, without depriving the owner of his property therein, it will only be a trespass or civil injury.

In some cases, belief, though erroneous, of a prisoner in the existence of a right to do the act complained of, excludes criminality. R. v. Twose, 14 Cox, 327. But this cannot be laid down as an absolute rule of law. Each case must depend on its own circumstances. Where an Act of Parliament renders a particular act unlawful, without reference to motive, belief is immaterial. See R. v. Bishop, 5 Q. B. D. 259. But where the state of mind or intention is made an element by the statute, as where a statute inflicts a penalty on any person wantonly doing a certain act, and such act is done by the agent of an incorporated company, some knowledge of the particulars ought to be brought home to the manager to render him liable. Small v. Warr, 47 J. P. 20.

But as a general rule no penal consequences are incurred where there has been no personal neglect or default, and a *mens rea* is essential to an offence under a penal enactment unless a contrary intention appears by express language or necessary inference. Dickinson v. Fletcher, L. R. 9 C. P. 1.

A mere naked intention, however, is not criminally punishable. There must be some carrying out, or attempt to carry out, that intention into action. Thus, although A. makes up his mind to shoot B., and confesses this resolution, the law is powerless to

deal with him; but directly he does anything in pursuance of that design he is within the grasp of the law.

If there be a present criminal intention, the prisoner is not exculpated because the results of the steps he takes to carry out that intention are other than those he anticipated or intended. For example, if A., intending to shoot B., shoot C., mistaking C. for B., he is criminally liable; and if A. shoots at B.'s poultry and by accident kills a man, if his intention was to steal the poultry, he will be guilty of murder. See Harris' Crim. Law 1, 2.

An *attempt* to commit a crime must be distinguished from an *intention* to commit it. Every attempt to commit a crime is itself an indictable misdemeanour at common law.

An attempt to commit a crime, is an indictable offence, see Code, s. 528, 529, 530, *ante*, p. 357; also R. v. Connolly, 26 Q. B. (Ont.) 322; R. v. Goff, 9 C. P. (Ont.) 438. So inciting another to commit an indictable offence as endeavouring to induce a person to take a false oath, is a crime. R. v. Clement, 26 Q. B. (Ont.) 297.

The act of attempting to commit an indictable offence must be immediately and directly tending to the execution of the principal crime, and committed by the prisoner under such circumstances, that he has the power of carrying his intention into execution. R. v. McCann, 28 Q. B. (Ont.) 514.

It may be observed that where the complete commission of the offence charged is not proved, but the evidence establishes an attempt to commit the offence the accused may be convicted of such attempt and punished accordingly, Code, s. 711; and when an attempt is charged and the full offence proved the jury may convict of the attempt unless the court discharge the jury and direct such person to be indicted for the complete offence and a conviction for an attempt is a bar to any charge of committing the offence, Code, s. 712. See R. v. Webster, 9 L. C. R. 196; R. v. Ewing, 21 O. B. (Ont.) 523; R. v. Thomas, L. R. 2 C. C. R. 141; see *ante*, p. 358.

A disregard of, or non-compliance with a positive command in an Act of Parliament is indictable. R. v. Toronto St. Ry. Co., 24 Q. B. (Ont.) 454.

Every one is guilty of an indictable offence and liable to one year's imprisonment who, without lawful excuse, disobeys any Act of the Parliament of Canada or of any legislature in Canada by wilfully doing any act which it forbids, or omitting to do any act which it requires to be done, unless some penalty or other mode of punishment is expressly provided by law. Code, s. 138.

Every one is guilty of an indictable offence and liable to one year's imprisonment who, without lawful excuse, disobeys any lawful order other than for the payment of money made by any court of justice, or by any person or body of persons authorized by any statute to make or give such order, unless some penalty is imposed, or other mode of proceeding is expressly provided, by law. Code, s. 139.

An order made under a power given in a statute is the same thing, as if the statute enacted what the order directs or forbids, and disobedience of such order is an offence for which an indictment will lie. R. v. Walker, L. R. 10 Q. B. 355.

When a person filling a public office, wilfully neglects or refuses to discharge the duties thereof, and there is no special remedy or punishment pointed out by the statute, an indictment will lie, as there would otherwise be no means of punishing the delinquent. R. v. Bennett, 21 C. P. (Ont.) 237.

But it seems that a mere non-feasance, in no way criminal in itself, cannot be treated as any species of criminal offence, unless expressly declared to be such by competent legislative authority. R. v. Snider, 23 C. P. (Ont.) 330-336.

Contributory negligence is not an answer to a criminal charge, as it is to a civil action. R. v. Kew, 12 Cox, 355.

INFANTS.

Under the age of seven an infant cannot be convicted of an indictable offence, Marsh v. Loader, 14 C. B. N. S. 535, for until he reaches that age he is presumed to be incapable of crime, and this presumption cannot be rebutted by the clearest evidence of a mischievous discretion. Between seven and fourteen he is still *prima facie*, deemed by law to be incapable of crime; but this pre-

sumption may be rebutted by clear and strong evidence of such mischievous discretion.

No person shall be convicted of an offence by reason of any act or omission of such person when under the age of seven years. Code, s. 9.

No person shall be convicted of an offence by reason of an act or omission of such person when of the age of seven, but under the age of fourteen years, unless he was competent to know the nature and consequences of his conduct, and to appreciate that it was wrong. Code, s. 10.

INSANITY.

No person shall be convicted of an offence by reason of an act done or omitted by him when labouring under natural imbecility, or disease of the mind, to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, and of knowing that such act or omission was wrong.

A person labouring under specific delusions, but in other respects sane, shall not be acquitted on the ground of insanity, under the provisions hereinafter contained, unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act or omission.

Every one shall be presumed to be sane at the time of doing or omitting to do any act until the contrary is proved. Code, s. 11.

Where the defence of insanity is set up, a medical man who has been present in court and heard the evidence may be asked as a matter of science, whether the facts stated by the witnesses supposing them to be true, show a state of mind incapable of distinguishing right from wrong, and where the medical expert has merely read the depositions without hearing the witnesses, the question must be put in the form of a suppositious case relating all the facts proved, and asking if, assuming all such facts to be true, they would indicate in the accused any and what form of insanity. But the defence of insanity will not avail unless it is shown that the accused at the time of committing the act was labouring under such a defect of reason as not to know the nature and quality of the act he was

doing, or as not to know that what he was doing was wrong. R. v. Dubois, 17 Q. L. R. 203.

No act is a crime if the person who does it, is, at the time when it is done prevented, either by defective mental powers or by any disease affecting his mind, from knowing the nature and quality of his act, or from knowing that the act is wrong, or from controlling his own conduct, unless the absence of the power of control has been produced by his own default. But an act may be a crime, although the mind of the person who does it is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act.

Every person is presumed to be sane, and to be responsible for his acts. The burden of proving that he is irresponsible is upon the accused person, but the jury may have regard to his appearance and behaviour in court. R. v. Oxford, 9 C. & P. 525; R. v. Stokes, 3 C. & K. 185.

A person so deficient in understanding as not to comprehend the proceedings on his trial, cannot be convicted of any offence; the trial must be stopped.

A deaf mute being tried for felony was found guilty, but the jury found also that he was incapable of understanding, and did not understand the proceedings on the trial. It was held that he could not be convicted, but must be detained as a non-sane person during the Queen's pleasure. R. v. Berry, L. R. 1 Q. B. D. 447.

As to the course to be pursued when it appears at the trial that the prisoner was insane at the time of the commission of the offence. See ss. 736 to 741 of the Code.

INSOLVENT COMPANIES.

"The Winding-up Act," R. S. C. c. 129, s. 95, makes it a misdemeanour for any officer of a company to destroy or alter any book with intent to deceive or defraud. This Act was amended by the 52 V. c. 32.

INSPECTION OF STAPLE ARTICLES OF CANADIAN PRODUCE.

The R. S. C. c. 99, governs this matter. Section 20 imposes a penalty on any inspector who refuses or neglects to inspect, on

personal or written application by the owner of an article, which the inspector is appointed to inspect. Altering, effacing or counterfeiting the inspector's brands or marks with a fraudulent intention, involves a penalty of forty dollars. *Ib.* s. 21. When the penalty or forfeiture does not exceed forty dollars, it shall, except when the Act otherwise provides, be recoverable by any inspector in a summary way before any two justices of the peace, according to the usual practice in such cases. *Ib.* s. 25. See 52 V. c. 16; 54 & 55 V. c. 48, and 56 V. c. 35.

INTOXICATING LIQUORS.

(*See* LIQUOR, SCOTT ACT.)

KIDNAPPING.

Every one is guilty of an indictable offence and liable to seven years' imprisonment who, without lawful authority, forcibly seizes and confines or imprisons any other person within Canada, or kidnaps any other person with intent—

(*a*) to cause such other person to be secretly confined or imprisoned in Canada against his will; or

(*b*) to cause such other person to be unlawfully sent or transported out of Canada against his will; or

(*c*) to cause such other person to be sold or captured as a slave, or in any way held to service against his will.

Upon the trial of any offence under this section the non-resistance of the person so kidnapped or unlawfully confined thereto shall not be a defence, unless it appears that it was not caused by threats, duress or force or exhibition of force. R. S. C. c. 162, s. 46; Code, s. 264.

LANDLORD AND TENANT.

The 11 Geo. II. c. 19, s. 4, was passed to prevent tenants fraudulently removing goods to the prejudice of the landlord. The statute provides that when the goods carried off or concealed shall not exceed the value of £50, the landlord or his bailiff, servant or agent may exhibit a complaint in writing before two or more jus-

tices of the peace who are empowered to summon the parties concerned, and in a summary way determine whether such person or persons be guilty of the offence with which he or they are charged, and upon full proof of the offence may and shall adjudge the offender or offenders to pay double the value of the said goods and chattels to such landlord or landlords at such time as the said justices shall appoint. In case of neglect or refusal, the justices may order distress, and for want of distress imprisonment with hard labour without bail or mainprize for the space of six months, unless the money so ordered to be paid as aforesaid shall be sooner satisfied.

By the fifth section of the Act an appeal is given to the Quarter Sessions. A bailiff or agent may prosecute, and the money may be ordered to be paid to such bailiff or agent. In Ontario, by virtue of the provisions of c. 61 of the Revised Statutes the defendant cannot be compelled to give evidence on the prosecution. R. v. Lackie, 7 O. R. 431; see, however, *ante*, pp. 407-408.

LARCENY.

Theft or stealing is the act of fraudulently and without colour of right taking, or fraudulently and without colour of right converting to the use of any person, anything capable of being stolen, with intent—

(*a*) to deprive the owner, or any person having any special property or interest therein, temporarily or absolutely of such thing, or of such property or interest; or

(*b*) to pledge the same or deposit it as security; or

(*c*) to part with it under a condition as to its return which the person parting with it may be unable to perform; or

(*d*) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking and conversion.

The taking or conversion may be fraudulent, although effected without secrecy or attempt at concealment.

It is immaterial whether the thing converted was taken for the purpose of conversion, or whether it was, at the time of the conversion, in the lawful possession of the person converting.

Theft is committed when the offender moves the thing or causes it to move or to be moved, or begins to cause it to become movable, with intent to steal it.

Provided, that no factor or agent shall be guilty of theft by pledging or giving a lien on any goods or document of title to goods intrusted to him for the purpose of sale or otherwise, for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving a lien on the same, together with the amount of any bill of exchange accepted by him for or on account of his principal.

Provided, that if any servant, contrary to the orders of his master, takes from his possession any food for the purpose of giving the same or having the same given to any horse or other animal belonging to or in the possession of his master, the servant so offending shall not, by reason thereof, be guilty of theft. R. S. C. c. 164, s. 63. Code, s. 305.

As to the things capable of being stolen see ss. 303 and 304 of the Code.

Section 305 abolishes the distinction formerly existing between larceny and embezzlement, and now fraudulently and without colour of right converting anything capable of being stolen with the intent specified, is theft, even if such thing was at the time of conversion in the lawful possession of the person converting.

Independently of the provisions of the statute the goods taken must be personal goods, for none other can be the subject of larceny at common law. It is to be observed, however, that the statute specifies various subjects of larceny which were not such at common law. Stealing dogs, beasts or birds ordinarily kept in a state of confinement or for any domestic purpose or for any lawful purpose of profit or advantage is punishable on summary conviction. Code s. 332.

Partridges hatched and reared by a common hen while they remain with her are the subjects of larceny. R. v. Shickles, L. R. 1 C. C. R. 158.

Water supplied by a water company to a consumer and standing in his pipes may be the subject of larceny at common law. Ferens v. O'Brien, 15 Cox, 332.

When the law as to stamping promissory notes was in force it was held that an unstamped promissory note was not a valuable security. Scott v. R., 2 S. C. R. 349.

It is not absolutely necessary that the instrument be negotiable in order to constitute it a valuable security. R. v. John, 13 Cox 100.

As to valuable security see Code, s. 3, (*cc*).

Section 336 of the Code relates to the stealing of any tree where the value of the article or articles stolen equals the sum of five dollars. It seems that in estimating the amount of injury, the injury done to two or more trees may be added together, provided the trees are damaged at one and the same time, or so nearly at the same time as to form one continuous transaction. R. v. Shepherd, L. R. 1 C. C. R. 118.

Under the 340th section, it seems the offender must have *knowledge* of the possession, and reading this section in connection with the others it seems that whatever trees, etc., are made the subject of larceny in the other sections, if found in the possession, or on the premises of any one, to his knowledge, and without accounting for how he came by the same, will subject such person to a conviction for so having them. A tree cut by the proprietor into cordwood, and taken away by some one after it has been made into cordwood, is, if stolen, a mere larceny of goods and chattels, and does not come within this section of the Act. Even if the section does apply to trees cut by the owner and lying on his land as he felled them, still it does not apply to cordwood, which is not "the whole or any part of any tree." R. v. Caswell, 33 Q. B. (Ont.) 303.

Things attached to the land, and not embraced in these sections, were not the subjects of larceny, unless severed from the freehold, and unless between the time of severance and the taking, the property therein vests in the owner of the freehold. Where the severance and the taking were one continuous act, there could

be no larceny. R. v. Townley, L. R. 1 C. C. R. 315; followed in R. v. Read, 14 Cox, 17. See, however, Code, s. 303.

If some of the things are severed before the larceny as to these, an indictment for simple larceny or receiving, is sustainable, and the conviction will be good, though the indictment contain any number of articles as to which a separate indictment could not be sustained. R. v. St. Denis, 8 P. R. (Ont.) 16.

The prisoner was indicted for larceny under "The Indian Act," R. S. C. c. 43, s. 65, and was convicted. The court held that he ought not to have been convicted, because the wood, the subject of the alleged larceny, was not, in the absence of satisfactory information supported by affidavit, "seized and detained as subject to forfeiture" under the Act, and because the affidavit required by s. 62 had not been made, and was a condition precedent to the seizure. R. v. Fearman, 10 O. R. 660. It seems, however, that the prisoner might have been indicted for larceny at common law. (*Ib.*)

At common law also the taking must be of the goods of another. Therefore a man cannot steal his own goods, and husband and wife, being one in law, they cannot steal each others goods. In Ontario, the Act respecting the property of married women, R. S. O. c. 132, may to some extent modify this rule.

So long as a wife is living properly with her husband, if she gives away his property, or sells it under ordinary circumstances, it would not be larceny, but if a wife goes away with a man for the purpose of committing adultery, and taking with her property of her husband's, and the adulterer either sells it or uses it as his own, he will be guilty of larceny, where he knows the real ownership of the property. R. v. Harrison, 12 Cox, 19.

The wife, though she is a party to the adultery, cannot be convicted of theft, and the adulterer cannot be convicted if he merely assists the wife to carry away her own wearing apparel from her husband. R. v. Fitch, D. & B. 187.

In reference to the property of third persons, where a wife is not acting under the control of her husband, she is liable to conviction independently of him. R. v. Cohen, 11 Cox, 99. Under the Code no husband shall be convicted of stealing, during cohabitation, the

property of his wife, and no wife shall be convicted of stealing, during cohabitation, the property of her husband; but while they are living apart from each other either shall be guilty of theft if he or she fraudulently takes or converts anything which is, by law, the property of the other in a manner which, in any other person, would amount to theft.

Every one commits theft who, while a husband and wife are living together, knowingly—

(*a*) assists either of them in dealing with anything which is the property of the other in a manner which would amount to theft if they were not married; or

(*b*) receives from either of them anything, the property of the other, obtained from that other by such dealing as aforesaid, s. 313.

At common law, one joint tenant or tenant in common, could not steal the goods which belonged to himself and the others jointly. Now, however, s. 311 of the Code, alters the law in this respect. See R. v. Lowenbruck, 18 L. C. J. 212; see also s. 312 of the Code.

An association which has not for its object gain or profit, is not a partnership under the 311th section. Where a member of a Young Men's Christian Association embezzled money obtained by him on behalf of the association, it was held that such association was not a co-partnership within the section, and that, therefore, there could be no conviction. R. v. Robson, 16 Q. B. D. 137.

In order to convict of an attempt to commit larceny, it must appear that there was property in the place where the attempt is made, that could be stolen. Therefore, where a person puts his hand into the pocket of another, with intent to steal, he cannot be convicted of an attempt to steal, unless it appears that there was some property in the pocket which might be stolen. R. v. Collins, 9 Cox, 497. But s. 64 of the Code now alters the law in this respect; see also Code, s. 528.

A gipsy, obtaining money and goods under pretence of practicing witchcraft, and without any intention to return them, was held properly indicted for larceny. R. v. Bunce, 1 F. & F. 523; see Code, s. 396.

At common law a bailee or person lawfully acquiring the possession of property for some specific purpose, could not be convicted of larceny in respect of any subsequent felonious conversion, if his intention at the time of obtaining possession were innocent. See Pease v. McAloon, 1 Kerr, 116. But now under s. 305, s-s. 3 of the Code, a bailee fraudulently converting is guilty of theft. See also s. 308.

Prisoner, a travelling watchmaker, received from different persons, watches, which he was to repair, and pledged the same for a loan of money. There was no evidence that the prisoner had made any effort to redeem the watches, and he was held guilty of larceny as a bailee. R. v. Wynn, 16 Cox, 231; see also R. v. Berthiaume, 3 M. L. R. 143; R. v. Sulis, 7 Q. L. R. 226.

To constitute a bailment, the property must come into the possession of the bailee lawfully under a contract, and where the property is obtained by fraud, and the prosecutor parts with all control over it as well as possession, there is no bailment. R. v. Hunt, 8 Cox, 495. As to who is a bailee, see R. v. Oxenham, 13 Cox, 349; R. v. Aden, 12 Cox, 512; R. v. Daynes, 12 Cox, 514.

An infant over fourteen years of age fraudulently converted to his own use goods which had been delivered to him by the owner, under an agreement for the hire of the same, and it was held that he was rightfully convicted of larceny as a bailee, though the contract was void by reason of the minority. R. v. McDonald, 15 Q. B. D. 323.

The prisoner, not being otherwise in the service of the prosecutor, was employed by him merely to take care of a horse for a few days, and afterwards to sell it, and having sold the horse and appropriated the money to his own use, it was held that he was properly convicted of larceny. R. v. De Banks, 13 Q. B. D. 29.

The prisoner asked the prosecutor for the loan of a shilling. The prosecutor gave the prisoner a sovereign, believing it to be a shilling, and the prisoner took the coin under the same belief. Sometime afterwards he discovered that the coin was a sovereign, and then and there fraudulently appropriated it to his own use. The prisoner was convicted of larceny of the sovereign, and it was

held that he was not guilty of larceny as a bailee, and a conviction for larceny at common law was sustained. R. v. Ashwell, 16 Q. B. D. 190. But the old rule that the innocent receipt of a chattel coupled with its subsequent fraudulent appropriation does not amount to larceny, is not affected by the foregoing case. See R. v. Flowers, 16 Q. B. D. 643. At common law there must be an actual or constructive taking of the goods, as larceny involves a trespass. Where the owner, by mistake, gives the possession of the goods, but the defendant knows the mistake and intends from the first to steal, this is a sufficient taking. R. v. Middleton, L. R. 2 C. C. R. 38. There must also be a carrying away, but as the offence lies in the very first act of removing the property, the least removing of the thing taken from the place where it was before with intent to steal, is a sufficient asportation. See R. v. Townley, L. R. 1 C. C. R. 319.

These distinctions are now of little practical importance as the gist of the offence is the fraudulent conversion.

A person who induces a servant of the post office to intercept and hand over a letter which is in course of transmission by the post is guilty of larceny, and can be convicted on an indictment charging him with larceny of the letter. R. v. James, 24 Q. B. D. 439.

The expression "property" in section 3, v. (ii), is defined to be not only such property as was originally in the possession or under the control of any person, but also any property into or for which the same has been converted or exchanged. Where therefore a prisoner was entrusted with certain negotiable paper for the purpose of getting it discounted and applying the proceeds for the specific purpose of paying certain promissory notes and the prisoner discounted the paper but failed to pay the notes therewith, it was held not necessary to charge him with converting the proceeds of the paper but that a charge of converting the paper itself was sustainable. R. v. Barnett, 17 O. R. 649.

The cheque of a firm before it is indorsed by the payee and while still in the hands of one of the members of the firm is not a valuable security within the terms of the larceny Act. R. v. Ford, 7 Mont. L. R. Q. B. 413.

So a receipt or discharge for a debt was held not to be a valuable security within the meaning of section 5, of the R. S. C. c. 173, and obtaining it by violence or threats was not a felony. R. v. Doonan, 6 Mont. L. R. Q. B. 186.

Where property is taken by a party under a claim of right, if the jury are of opinion that the taking by the prisoner was an honest assertion of his right, they should find him not guilty, but if it is only a colourable pretence to obtain possession they should convict. R. v. Wade, 11 Cox, 549. Under s. 305 of the Code the taking or conversion must be without colour of right.

To constitute larceny there must be an intent to take the goods of another against his will, with intent to deprive the owner of his property therein. R. v. McGrath, L. R. 1 C. C. R. 210-11; see also R. v. Prince, *Ib.* 150; R. v. Bailey, *Ib.* 147; Code, s. 305 (*a*).

Returning the goods may be evidence to negative the intent at the time of taking them, but it is no defence that the prisoner intended to return them when taken.

A finder of lost goods who converts them, commits theft, if at the time when he takes possession of them he intends to convert them, knowing who the owner is, or having reasonable grounds to believe that he can be found. Such conversion is theft, (*a*) if at the time when the finder takes possession of the goods, he has not such knowledge or grounds of belief as aforesaid, but acquires them after taking possession of the goods, and before resolving to convert them; or (*b*) if he does not intend to convert the goods at the time when he takes possession of them, whether he has such knowledge or grounds of belief or not at any time. See Code, s. 305, R. v. Matthews, 12 Cox, 489. If the circumstances are such as to lead the finder reasonably to believe that the owner intended to abandon his property in the goods, the finder is not guilty of theft in converting them. See R. v. Thurborn, 1 Den. 387; R. v. Glyde, L. R. 1 C. C. R. 139.

Where there is no force or fear, and the property is taken suddenly, the offender is guilty of the offence of stealing from the person. To constitute this offence, the thing taken must be on the person, or under the protection of the prosecutor. If for instance,

on retiring at night, the prosecutor leaves his clothing in another room, rifling the pockets would not be stealing from the person. See s. 344 of the Code.

Robbery is theft accompanied with violence or threats of violence to any person or property used to extort the property stolen, or to prevent or overcome resistance to its being stolen. Code, s. 397.

As in other cases of theft, there must be an intent to deprive the owner or any person having any special property or interest therein, temporarily or absolutely, of such thing, or of such property or interest. See Code, s. 305 (a).

Where a creditor violently assaulted his debtor, and so forced him to give a cheque in part payment, and then again assaulted the debtor in order to force him to give money in payment of the debt, it was held that there was no robbery, the creditor believing that he had a right to his debt. R. v. Hemmings, 4 F. & F. 50.

Robbery is in fact larceny, aggravated by circumstances of force, violence or putting in fear, and a party charged with robbery may be convicted of larceny, as the latter crime includes the former. R. v. McGrath, L. R. 1 C. C. R. 210, 211.

No sudden taking or snatching of property unawares from a person is sufficient to constitute robbery, unless some injury be done to the person, or there be a previous struggle for the possession of the property, or some force be used to obtain it, and the fear must precede the taking.

In robbery there must be a complete removal of the thing from the person of the party robbed—both a taking and a carrying away. An assault with intent to rob is distinguished from robbery in this, that in the former, there is no taking or carrying away, the purpose not being effected. A person, charged with an assault with intent to rob, cannot be convicted of a common assault. R. Woodhall, 12 Cox, 240.

Against the wall of a public passage was fixed what is known as an "automatic box," the property of a company. In such box was a slit of sufficient size to admit a penny piece, and in the centre of one of the slides was a projecting button or knob. The

box was so constructed that upon a penny piece being dropped into the slit, and the knob being pushed in, a cigarette would be ejected from the box on to a ledge which projected from it. Upon the box were the following inscriptions: "Only pennies, not half-pennies," "To obtain an Egyptian Beauties' Cigarette, place a penny in the box and push the knob as far as it will go." The prisoner dropped into the slit in the box a brass disc, about the size and shape of a penny, and thereby obtained a cigarette. This was held to be larceny, the cigarette having been obtained by fraud. R. v. Hands, 16 Cox, 188.

Two prisoners, by a series of tricks, fraudulently induced a barmaid to pay over money of her master's to them without having received from them in return the proper change. The barmaid had no authority to pay over money without receiving the proper change and had no intention of, or knowledge that she was so doing, and this was held to be larceny. R. v. Hollis, 12 Q. B. D. 25.

Where a servant is entrusted with his master's property with a general or absolute authority to act for his master in his business, and is induced by fraud to part with his master's property, the person who is guilty of the fraud, and so obtains the property, might now be convicted either of obtaining it by false pretences or of larceny. Formerly where a servant had no such general or absolute authority from his master, but was merely entrusted with the possession of his goods for a special or limited purpose, and was tricked out of that possession by fraud, the person guilty of the fraud and so obtaining the property was guilty of larceny, because the servant had no authority to part with the property in the goods except to fulfil the special purpose for which they were entrusted to him. R. v. Prince, L. R. 1 C. C. R. 150.

According to the common law, and as illustrative of the distinction between larceny and embezzlement, if a servant received money on account of his master, and put it in his pocket before it reached his master's custody (as if a clerk in a shop, on receiving money from a customer, put it into his pocket before putting it into the till), he could not be convicted of larceny, for the money was never in the master's possession, but if the servant placed it in the till, his afterwards taking it out of the till, with a felonious

intent, would be larceny, and it is still larceny. R. v. Hennessy, 35 Q. B. (Ont.) 603. Now, however, s. 305 of the Code removes even this distinction, for converting without colour of right is the same as taking.

Under s. 319 it is not necessary that the servant should receive the money by virtue of his employment. Therefore, though the servant receives the money without authority and without any duty to receive, he is still liable under this section. See Arch. Cr. Pldg. 453.

There can be no offence under s. 319 of the Code, unless the person who converts stands, to the owner of the property converted in the relation of a clerk or servant or person employed in the capacity of a clerk or servant.

It is a question for a jury whether a person accused of embezzlement is a clerk or servant or not. R. v. Arman, 7 Cox, 45. See R. v. Negus, L. R. 2 C. C. R. 34. A clerk or servant is a person bound either by an express contract of service, or by conduct implying such a contract, to obey the orders and submit to the control of his master in the transaction of the business which it is his duty as such clerk or servant to transact. *Ib.*; R. v. Tite, L. & C. 33; R. v. Foulkes, L. R. 2 C. C. R. 152.

A man may be a clerk or servant although he was appointed or elected to the employment in respect of which he is a clerk or servant by some other person than the master whose orders he is bound to obey. Macdonald's case, L. & C. 85.

Although he is paid for his services by a commission or a share in the profits of the business. R. v. Carr, R. & R. 198.

Although he is a member of any co-partnership, or is one of two or more beneficial owners of the property embezzled. Code, s. 311.

Although he is the clerk or servant of more masters than one. R. v. Spencer, R. & R. 299.

Although he acts as clerk or servant only occasionally, or only on the particular occasion on which his offence is committed. R. v. Hughes, Moo. C. C. 370.

But an agent or other person who undertakes to transact business for another without undertaking to obey his orders is not

necessarily a servant, because he receives a salary, or because he has undertaken not to accept employment of a similar kind from any one else, or because he is under a duty, statutory or otherwise, to account for money, or other property received by him. R. v. Callahan, 8 C. & P. 154; See as to traveller paid by commission, R. v. Richmond, 12 Cox, 495; and further on the point as to who is a clerk or servant, see R. v. Hall, 13 Cox, 49; R. v. Foulkes, 13 Cox, 63.

The offence of embezzlement cannot be committed by the appropriation of property which does not belong to the master of the alleged offender, although such property may have been obtained by such alleged offender by the improper use of the property entrusted to him by his master; but property which does belong to the master of the offender may be embezzled, although the offender received it in an irregular way. R. v. Cullum, L. R. 2 C. C. R. 28; R. v. Glover, L. & C. 466.

The inference that a prisoner has fraudulently converted property to his own use may be drawn from the fact that he has not paid the money or delivered the property in due course to the owner, or from the fact that he has not accounted for the money or other property which he has received, or from the fact that he has falsely accounted for it, or from the fact that he has absconded, or from the fact that upon the examination of his accounts there appears to be a general deficiency unaccounted for; but none of these facts constitutes in itself the offence of fraudulently converting nor is the fact that the alleged offender rendered a correct account of the money or other property entrusted to him inconsistent with his having fraudulently converted it.

On the trial of a secretary-treasurer of a municipal corporation for embezzlement, evidence of a general deficiency having been given, accompanied by evidence of unlawful appropriation by the prisoner of moneys received by him by virtue of his employment, the court held a conviction proper, though it was not proved that a particular sum coming from a particular person on a particular occasion was embezzled by the prisoner. R. v. Slack, 7 Mont. L. R. Q. B. 408. But evidence of a general deficiency in the books of a

clerk in a bank will not alone support an indictment for larceny. There must be some proof of a taking, that is, that certain money went into the hands of and was taken by the prisoner. R. v. Glass, 7 Mont. L. R. Q. B. 405.

Under s. 626, s-s. 4 of the Code, unless there be special reasons, no order shall be made preventing the trial at the same time of any number of distinct charges of theft not exceeding three, alleged to have been committed within six months from the first to the last of such offences, whether against the same person or not.

Where the value of the property stolen does not exceed ten dollars, a person charged with theft may be tried under the provisions of that part of the Code relating to the summary trial of indictable offences, Code, s. 783. An attempt to commit theft is also triable in the same manner. As to the punishment, see s. 787; see also s. 810, as to the trial of persons committing theft whose age does not exeeed sixteen years. As to the evidence on charges of stealing ores or timber, see ss. 707 and 708.

Every one is guilty of an indictable offence and liable to seven years' imprisonment who, having obtained elsewhere than in Canada any property by any act which if done in Canada would have amounted to theft, brings such property into or has the same in Canada. R. S. C. c. 164, s. 88. Code, s. 355.

The prisoner being the agent of the American Express Company, in the State of Illinois, received a sum of money which had been collected by them for a customer, and put it into their safe, but made no entry in their books of its receipt, as it was his duty to do, and afterwards absconded with it to Canada where he was arrested. The prisoner was held guilty of larceny, though there was nothing to show that the act of the prisoner was by the law of the State of Illinois, larceny, and it seems that proof of this description is not required. R. v. Hennessy, 35 Q. B. (Ont.) 603.

It is sufficient under this section to show that the property was taken in such manner as would make it a crime by the laws of Canada, and it is not necessary to show the exact state of the

foreign law, as the criminal nature of the prisoner's acts out of Canada. R. v. Jewell, 6 M. L. R. 460.

As to laying the property in an indictment for theft, see ss. 623, 624 and 625 of the Code.

LAWLESS AGGRESSIONS.

(*See* AGGRESSIONS.)

LIBEL.

A defamatory libel is matter published without legal justification or excuse, likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or designed to insult the person to whom it is published.

Such matter may be expressed either in words legibly marked upon any substance whatever, or by any object signifying such matter otherwise than by words, and may be expressed either directly or by insinuation or irony. Code, s. 285.

Publishing a libel is exhibiting it in public, or causing it to be read or seen, or shewing or delivering it, or causing it be shewn or delivered, with a view to its being read or seen by the person defamed, or by any other person. Code, s. 286.

This offence must be tried in the province where the accused resides. Code, s. 640 (2).

All words spoken of another, which impute to him the commission of a crime punishable by law are indictable; so all words spoken of another, which have the effect of excluding him from society, for example, to say he has the leprosy; so writing or publishing anything which renders another ridiculous or contemptible is indictable, except it be within the fair limits of literary criticism. So words used of a man which impair or hurt his trade, or livelihood, as to call a physician a quack, are indictable. To make a writing a libel it must be published, though by publication is not necessarily meant in a newspaper, for communications to a single person in a private letter, is a publication. No words spoken, however scurrilous, even though spoken personally to an individual, are the subject of an indictment, unless they directly tend to a breach of the peace; for example, by inciting to

a challenge. We must here except words seditious, blasphemous, grossly immoral, or uttered to a magistrate while in the execution of his duty.

The publication of any obscene writing is unlawful and indictable, and it is no defence that the object of the party was laudable, for, in case of libel, the law presumes that the party intended what the libel was calculated to effect. R. v. Hicklin, L. R. 3 Q. B. 360. See Code, s. 179.

Proceedings before magistrates, under s. 839 of the Code are strictly of a judicial nature, and the place where such proceedings are held is an open court. The defendant, as well as the prosecutor, has the right to the assistance of an attorney and counsel, and to call what witnesses he pleases, and both parties having been heard, the trial and judgment may be lawfully made the subject of a printed report, if that report is impartial and correct. Lewis v. Levy, E. B. & E. 537; see also Usill v. Hales, L. R. 3 C. P. D. 319. The same rule would apply to investigations by magistrates in the case of indictable offences, so long as the magistrate continues to sit in open court, but if he chooses to carry on the proceedings in private, as he may do under s. 586 of the Code, or in the case of minors, see Code, s. 550, then the publication of the proceedings would be unlawful.

A justice of the peace may issue his warrant to arrest a party charged with libel. Butt v. Conant, 1 B. & B. 548. The R. S. C. c. 163, is the Act respecting Libel. Only ss. 6 and 7 are now in in force. See Code, s. 981, schedule 2.

LIQUOR.

In the North-West Territories intoxicating liquor is not allowed to be manufactured, sold or bartered, except by special permission of the Governor in Council. R. S. C. c. 50, s. 92. The same law prevails in the District of Keewatin. R. S. C. c. 53, s. 35.

Section 91 of "The Liquor License Act, 1883," now repealed, applied only to localities in which "The Canada Temperance Act" was not in force. R. v. Klemp, 10 O. R. 143. See *ex parte* Coleman, 23 S. C. N. B. 574.

The Canadian Pacific Railway was being constructed fifty miles north of the mouth of the Michipicoten river where there was a post of the Hudson Bay Company and a small collection of stores and houses known by the name of the village of Michipicoten River. A contractor for the railway had his headquarters at this point and had constructed a supply road to the works. The work had not been proclaimed under s. 1. s-s. 2 of the R. S. O. c. 35. The court held that Michipicoten River was a "village" within the section, and therefore the Act which regulated the sale of intoxicating liquors near public works did not apply, and all proceedings purporting to be taken under the Act were therefore invalid. Bond v. Conmee, 16 A. R. 398; Cassels Dig. (1893), p. 511.

Section 118 of the Code prohibits the sale of liquors near public works, see also R. S. C. c. 151, ss. 13-19.

In Ontario the R. S. c. 194, as amended by the 51 V. c. 30, the 52 V. c. 41, the 53 V. c. 56, the 55 V. c. 51, and the 56 V. c. 40, now govern the sale of intoxicating liquor.

The legislature in passing the R. S. O. c. 194, had power to impose hard labour in addition to imprisonment. R. v. Hodge, 7 A. R. 246; Hodge v. R., 9 App. Cas. 117; Sulte v. Corporation Three Rivers, 11 S. C. R. 25.

Under ss. 3, 4 and 5 of this Act, the Board of License Commissioners has power to pass certain resolutions. Acting in the assumed exercise of this power, the Board of License Commissioners for Toronto passed resolutions to the effect that no licensed victualler should sell any intoxicating liquor to any child apparently under the age of fourteen years, and should not suffer any billiard table to be used in his tavern during the time prohibited by the Act or by the resolution for the sale of liquor therein, and a penalty of $20, to be levied by distress, was imposed on any person infringing the resolutions. It was held that the legislature had power to delegate its authority and enable the License Commissioners to enact regulations of the above character. R. v. Hodge, 7 A. R. 246; Hodge v. R., 9 App. Cas. 117; see 53 V. c. 56, s. 3.

On an information charging that the defendant in his premises being a place where liquor might be sold, unlawfully did have his

bar-room open after 10 o'clock in the evening contrary to the rules and regulations for license holders, passed by the license commissioners, etc. The defendant signed an admission stating that the information having been read over to him he desired to plead guilty to the charge. This was the only evidence before the court, and on it the defendant was convicted. It did not appear that the municipality had passed any by-law on the subject. It was held, on the authority of R. v. Brown, 24 Q. B. D. 357, that the admission did not prevent the defendant from objecting to the power of the license commissioners to pass such rules and regulations, but that they had the power to do so and the objection was overruled. R. v. Farrell, 23 O. R. 422, following McGill v. License Commissioners, Brantford, 21 O. R. 665.

A license to sell liquor only extends to permit a sale on the premises licensed, and not to other premises forming no part of the licensed premises, though owned by the same person. The defendant was licensed to sell "in and upon the premises known as the 'Palmer House.'" The "Palmer House" stood upon the front part of a deep lot owned by the defendant, the rear part of which had been for many years enclosed and used as a fair ground. Facing the ground and opening therein was a booth, the back of which formed part of a fence, which separated the fair ground from the yard in the rear of the hotel. The distance between the nearest outbuilding of the hotel and the booth was fifty yards, and it did not appear that the booth was used at all in connection with the hotel. A conviction for selling liquor without a license in the booth was held proper, for it was no part of the licensed premises. R. v. Palmer, 46 Q. B. (Ont.) 262.

Under s. 49 of the Act, no person shall sell by wholesale or retail any spirituous, fermented or other manufactured liquors, without having first obtained a license under the Act, authorizing him so to do; but this section shall not apply to sales under legal process, or for distress, or sales by assignees in insolvency.

Upon a charge of selling liquor without a license, there must be evidence that the liquor was intoxicating. R. v. Grannis, 5 M. L. R. 153. R. v. Bennett, 1 O. R. 445.

It is a question of fact whether the liquor sold is intoxicating, and a mild beverage which would not cause perceptible intoxication to some persons, may be held to be intoxicating, if it exhilarates the parties who drink it, though it might not be sufficiently strong to affect habitual users. R. v. McDonald, 24 N. S. R. 35.

It would seem that the conviction for selling without license should negative a sale under legal process. See *ante*, p. 191. R. v. Mackenzie, 6 O. R. 165.

If the prosecution is for selling without license, the conviction should allege the sale to be without license. See *ex parte* Woodhouse, 3 L. C. R. 94; see schedule D, No. 3, also s. 103; see however, McCully v. McCay, 3 Cochran, 82.

Section 25 of the (Ont.) 32 V. c. 32, applied where there was no license; s. 26 when there was a license to sell not less than a quart, but the party was without the license therefor, that is to sell the smaller quantity. R. v. Firmin, 33 Q. B. (Ont.) 523.

This section prevents any person selling without license, and s. 54 applies where the offender has a license but sells during prohibited hours. As to the penalty for selling without license, see s. 70.

The 50th section prohibits keeping liquor for sale. Under this section the evidence should show that the liquor was kept in such a place as is specified therein.

Where an Act made it an offence to keep liquor for sale in any house, or other place whatsoever, it was held sufficient to allege that the offence was committed at a certain town, without specifying the house or building. R. v. Coulter, 4 M. L. R. 309. Probably in view of the forms in the schedule to this Act the foregoing decision is correct, but it is submitted there must be proof at the hearing that the liquor is kept in a house, building, etc.

To keep liquor for the purpose of selling, or for the purpose of trading, or for the purpose of bartering, is only one offence of keeping for an unlawful purpose. R. v. Coulter, *supra*. As to the evidence necessary to prove that the liquors are kept for sale, see s. 108.

Two defendants cannot be jointly convicted under the 50th section, and an award of one penalty, jointly, against them is

erroneous. The offence does not arise from the joint act of the defendants, but from the personal and particular omission of each defendant to procure a license, and it is several in its nature. When such defendants are jointly charged in an information, it is a violation of the provisions of s. 845 (3) of the Code, which requires every complaint to be for one matter only. See *ante*, p. 154. R. v. Snider, 23 C. P. (Ont.) 330.

Such a conviction of two defendants was therefore quashed on *certiorari*. R. v. Sutton, 14 C. L. J. N. S. 17.

A conviction for selling liquor without license, which did not state that the liquor was not supplied upon a requisition for medicinal purposes, was held bad under the (Ont.) 32 V. c. 32, s. 23. R. v. White, 21 C. P. (Ont.) 354. See also *ex parte* Clifford, 3 Allen, 16; Mills & Brown, 9 U. C. L. J. 246.

In the case of R. v. White, *supra*, the exception was contained in the *enacting* clause of the statute, and it is not to be inferred from this decision that a conviction under this or the 49th section should negative the exceptions contained in ss. 51 or 52, these exceptions being in different subsequent sections.

A conviction under this section need not negative the exceptions contained in ss. 51 & 52. R. v. Breen, 36 Q. B. (Ont.) 84. See *ante*, pp. 191-192.

Section 51 and s-s. 2 of s. 51, are amended by the 55 V. c. 51, ss. 5 & 6.

Section 52, as amended by 55 V. c. 51, s. 7, regulates sales by chemists and druggists for medicinal purposes.

The non-entry in a book of the lawful sale of liquor by a druggist pursuant to this section constitutes an absolute contravention of the Act. R. v. Elborne, 19 A. R. 439, reversing same case, 21 O. R. 504. Every such sale is now a contravention of the provisions contained in ss. 49 & 50 of the Act. See 55 V. c. 51, s. 7.

It is an offence under this section, as amended by 55 V. c. 51, s. 7, for a chemist or druggist to allow liquor "sold by him or in his possession to be consumed within his shop by the purchaser thereof," and it is not essential that he should be registered. A conviction in the above form does not charge an alternative offence

because the gist of the offence is in allowing the liquor to be consumed on the premises. R. v. McCay, 23 O. R. 442.

A conviction of defendant, who was a registered druggist, for selling spirituous and intoxicating liquors by retail, to wit, one bottle of brandy to one O. S., at and for the price of $1.25, without having a license so to do as by law required, the said spirituous and intoxicating liquor being so sold for other than strictly medicinal purposes only, was held valid, for the defendant was not, as a druggist, authorized to sell without a license, and it was unnecessary for the prosecutor to show that he was not licensed, or to negative any exemptions or exceptions. R. v. Denham, 35 Q. B. (Ont.) 503; see the form, Schedule D, No. 11; also s. 114.

Section 53 of the R. S. c. 194, has been amended by 53 V. c. 56, s. 4, by striking out all the words after the word "club" in the fourth line thereof, down to and including the word "Act" in the ninth line thereof. The meaning of this section is that where in a club or society incorporated under "The Benevolent Societies Act," R. S. O. c. 172, liquor is sold or supplied to members, but such sale or supplying is not the special or main object of the club, but is merely an incident resulting from its principal object, there is no violation of "The License Act," but it is otherwise if the sale or supplying the liquor is the main object of the incorporation. The question, however, is for the decision of the magistrate on the evidence, and there being evidence in this case, which was that of a club purporting to be a gun club, to support the finding of the magistrate that the sale of liquor was the special or main object of the club with the intent to evade "The Liquor License Act," the court refused to interfere with the finding. R. v. Austin, 17 O. R. 743.

Section 54 of the Act prohibits selling on Sunday and during certain specified hours. As to the evidence necessary in prosecutions under this section, see s. 110.

Where a defendant is charged with selling liquor during prohibited hours, there must be proof of the license to justify a conviction. R. v. Williams, 3 W. L. T. 126.

In proof of defendant being a licensed hotelkeeper under the Act, a witness in giving evidence stated defendant to be such, and although the defendant was present and represented by counsel, he allowed the statement to pass unchallenged. The evidence was held sufficient, as the witness might have obtained his information from the defendant. If the witness had been cross-examined and had declared that his knowledge of the facts had been obtained from an inspection of the license or from some similar source, the evidence would have been insufficient. R. v. Flynn, 20 O. R. 638.

Where the charge is made against a licensee for some breach of the statute, it must be shown on the part of the prosecution that he was a licensee, and the production of the license after sentence, for the purpose of being indorsed as required by the statute, is not sufficient. R. v. Grannis, 5 M. L. R. 153.

A defendant was convicted of an unlawful sale of liquor during prohibited hours, and it was held that ss. 54 and 58 do not authorize the sale of liquor to a lodger in the licensee's house during prohibited hours. The most that can be said is that the sale to the lodger does not thereby make him an offender. R. v. Southwick, 21 O. R. 670. See the amendment of s. 54 introduced by the 52 V. c. 41, s. 4, and the amendment of s-s. 1 of s. 58 introduced by the 53 V. c. 56, s. 6 (3).

The 54th section applies when the defendant has a license but sells during the prohibited hours. It is only the holder of a license who can be prosecuted under this section for selling on prohibited days. R. v. Duquette, 9 P. R. (Ont.) 29; R. v. French, 34 Q. B. (Ont.) 403.

A conviction under this section must shew that the place in which the liquor was sold was one in which "intoxicating liquors are or may be sold by wholesale or retail;" in other words it must shew that the defendant had a license. R. v. Bodwell, 5 O. R. 186. See schedule D, No. 5, also schedule G.

The punishment for offences under this section must be either imprisonment with hard labour or a fine. If a fine is imposed there is power to award imprisonment at hard labour in the event of non-payment. See 53 V. c. 56, s. 6, which amends s. 71 of the R. S. O. c. 194.

A conviction under this section should shew that the sale was not made on a requisition for medicinal purposes. See R. v. White, 21 C. P. (Ont.) 354. See the form of conviction in the schedule G to the Act.

If the conviction were for allowing the liquor to be drunk on the premises, during the prohibited hours, it would be necessary to aver that such consumption was not by the occupant or some member of his family or lodger in the house. See schedule D, No. 6, to the Act.

Under s. 60, persons having a shop license to sell by retail, and chemists, must not permit any liquor sold by them to be consumed on the premises, either by the purchaser or any other person.

The holder of a shop license cannot sell in quantities less than three half-pints at any one time, to any one person. See s. 2, s-s. 3; R. v. Faulkner, 26 Q. B. (Ont.) 529.

Section 66 of the Act renders it unlawful for the license commissioners, or any inspector, either directly or indirectly, to receive or take any money for any certificate, license or report, other than the sum to be paid therefor as the duty under the Act.

Prior to this Act, when licenses were granted by the council, it was held that a reeve of a municipality was not liable to conviction for signing a certificate for a license, and delivering the same to the clerk, with instructions not to hand it over to the applicant until the inspector had reported in favour of the applicant. R. v. Paton, 35 Q. B. (Ont.) 442.

The 70th section of the Act prescribes the penalties for selling liquor without license as well for the first as for the second offence.

The defendant purchased for $25 from a duly licensed hotel keeper the day's receipts of the bar, and at the close of the day had paid over to him such receipts. It was held that a conviction against defendant for selling liquor without a license could not be maintained, and the conviction was quashed. R. v. Westlake, 21 O. R. 619.

The license Act in New Brunswick provides that in cities all applications for licenses shall be considered by the mayor at a

meeting to be held "not later" than the first April in each year. It was held no defence to a charge for selling liquor without license that the meeting to consider the applications for licenses had not been held till after the 1st April, and that not being held on the day stated the license could not be legally refused. *Ex parte* Driscoll, 27 S. C. N. B. 216.

The defendant attempted to justify a sale because at the time his license was refused no meeting for the purpose could be legally held.

The fact of an offence is established and known to the law only by a conviction, and the first offence means the first time that the accused is convicted, and a second offence would, it seems, be an offence committed after such previous conviction. See McGregor v. McArcher, 2 Russ. & Ches. 362.

A conviction for selling liquor without license may award imprisonment for thirty days in default of sufficient distress. R. v. Young, 7 O. R. 88; see s. 88 of the Act.

A conviction for selling liquor without license under s. 70 imposed a fine of $50 and costs, and in default of payment, forthwith directed imprisonment without any prior distress. This was a first conviction, and the court held there was no power to direct distress, and that the punishment provided was proper. In the case of a second conviction there can be no imposition of a fine, but the defendant must go to prison under the terms of the section. R. v. Clarke, 19 O. R. 601.

Under the 88th section, repealed by the 53 V. c. 56, s. 10, where a fine was imposed, there was no power to award imprisonment at hard labour, but only without hard labour. R. v. Bodwell, 5 O. R. 186.

It is not a valid objection to a conviction under ss. 60 and 70 of the Act that it does not state that the imprisonment was for the term specified, unless the costs and charges of conveying to gaol were sooner paid. R. v. Clarke, 20 O. R. 642.

The 53 V. c. 56, s. 7, provides that in all cases of conviction, under the "Liquor License Act," or of this Act where the justice or justices are authorized to adjudge that a penalty in money or a

penalty in money and costs be paid by the defendant, and that in default of payment thereof the defendant be imprisoned for any period with or without hard labour, the justice or justices may, by the conviction, adjudge that the defendant be imprisoned unless the sum or sums adjudged to be paid and also the costs and charges of the commitment and conveying of the defendant to prison are sooner paid. (2) The amount of the costs and charges of the commitment and conveying of the defendant to prison, are to be ascertained and stated in the warrant of commitment.

Under the power conferred on justices of the peace by the R. S. C. c. 74, s. 2, to order in and by the conviction the payment of reasonable costs, a charge of fifty cents for drawing up a conviction under the "Liquor License Act," is authorized. R. v. Excell, 20 O. R. 633.

A constable, who by order visits saloons on Sundays to see whether or not the law with respect to the sale of liquor is being obeyed, is a *bona fide* traveller within the meaning of the Act. R. v. Harris, 2 B. C. R. (Hunter), 177.

Section 81 provides that if any person guilty of an offence under the Act, compounds or compromises, or attempts to compound or compromise the offence, he shall, on conviction, be imprisoned at hard labour.

This section is within the powers of the Provincial Legislature. R. v. Boardman, 30 Q. B. (Ont.) 553; Keefe v. McLennan, 2 Rus. & Ches. 5.

The 88th section of the Act was repealed by the 53 V. c. 56 s. 10.

The 93rd section of the Act enables any person to prosecute under the Act.

A deputy revenue inspector may validly sign a plaint or information. Reynolds & Durnford, 7 L. C. J. 228.

Under s. 94, all informations or complaints for the prosecution of any offence against any of the provisions of this Act, must be laid or made in writing (within thirty days after the commission of the offence, or after the cause of action arose, and not afterwards), before any justice of the peace for the county or district in which

the offence is alleged to have been committed, but may be made without any oath or affirmation to the truth thereof, and the same may be according to the form of Schedule C to this Act or to the like effect.

Under this section the information must show that it is laid within thirty days after the commission of the ...ce, or after the cause of action arose. See *ante*, p. 18.

But the information need not contain an express allegation to this effect. If it appears on the face of the information this will suffice. Reid v. McWhinnie, 27 Q. B. (Ont.) 289.

Where, therefore, the information in the form given in Schedule C to the Act, shows the day of sale as in that form, and also the day of the laying of the information, this will be sufficient, without any express allegation that the laying of the information is within the thirty days; provided, of course, that the fact is so.

The court would no doubt sustain an information which followed the form C in the schedule. See section 103, R. v. Strachan, 20 C. P. (Ont.) 182.

Under the (Ont.) 32 V. c. 32, it was not nec... ...y that it should appear on the face of the conviction that the prosecution was commenced within twenty days of the commission of the offence. This latter point, however, depended upon the fact that the section of the Act containing the limitation, was entirely distinct from the section creating the offence and imposing the penalty. The rule in such cases is that the limitation arising under a distinct clause is matter of defence, and need not appear on the face of the conviction. R. v. Strachan, 20 C. P. (Ont.) 182; Wray v. Toke, 12 Q. B. 492.

It has been held in the Province of Quebec, that in a prosecution for selling liquor without license, the information need not be under oath. *Ex parte* Cousine, 7 L. C. J. 112; see also R. v. McConnell, 6 O. S. 629.

Where the information and the evidence show the sale of liquor to be at a certain place which, by a public statute, is shown to be within the county for which the magistrate is acting, this will be sufficient. R. v. Young, 7 O. R. 88. The 96th section of the Act

was amended by the 53 V. c. 56, s. 11, by striking out the words "section 70" in the fourth line of the said section and substituting therefor the words "section 85." Under this section of the Act certain prosecutions are to be before two justices of the peace, except in rural municipalities where one justice may act. See section 99. Where the conviction is by one justice only, it should show the facts giving him jurisdiction, and the form of conviction given in the schedule must be altered and adapted to meet the exigencies of the case. See R. v. Clancy, 7 P. R. (Ont.) 35.

In Nova Scotia it has been held where a summons for selling liquor contrary to law was issued by two justices of the peace, and the cause tried before one of them and a justice who had not signed the summons, that the conviction must be set aside. Weeks v. Bonham, 2 Russ. & Ches. 377.

The direction in s-s. 2 of s. 96, of the R. S. O. c. 194, as to witnesses signing their evidence is not imperative but directory only. R. v. Excell, 20 O. R. 633; R. v. Scott, 20 O. R. 646.

By a conviction for unlawfully having a bar-room open after 10 o'clock in the evening, contrary to the rules, etc., a fine and costs were imposed, and in default of payment distress, and in default of sufficient distress, imprisonment. The court held under the 98th section of the Act incorporating section 427 of the Municipal Act, that costs and imprisonment could properly be imposed. R. v. Farrell, 23 O. R. 422.

Section 101 of the Act regulates the procedure in cases where a previous conviction is charged. Sub-section 6 of this section was amended by inserting after the words "s. 70" in the fifth line thereof the words "or 85," and by inserting after the words "s. 70" where they occur in the eighth and fourteenth lines thereof the words "or 85 as the case may be." See 53 V. c. 56, s. 12.

Under the 4th sub-section of s. 101, convictions imposing the increased penalties for second and third offences are bad, unless proceedings have been taken for the first offence. R. v. Bodwell, 5 O. R. 186.

F. was convicted on the 5th of February, before W. R., a justice of the peace, for that he did on Sunday, the 19th of January, sell

and receive pay for intoxicating liquor at his hotel, and was fined $40 and costs, to be paid forthwith, and in default of distress, to be imprisoned for twenty days at hard labour.

On the 12th of February, F. was convicted before D. S., and J. L., two justices of the peace, for that he did "on Sunday, the 26th of January, sell and receive pay for intoxicating liquors," etc., "the same being the third offence," etc., and was fined $100 and costs, and in default of distress to be imprisoned for fifty days.

A certificate of the first named conviction was before the magistrates on the second conviction. There was also evidence of the sale of liquor by defendant on three Sundays, but the information did not allege the previous offence. It was not shown whether defendant was licensed. The court held that the first conviction was bad, for it did not show whether it was for selling liquor without a license, or having a license for selling on Sunday, and if for selling without a license it was bad, because it awarded imprisonment at hard labour, and if for selling on Sunday, then because it was not alleged to be a second offence. It was held also, that the second conviction was bad, because, if for selling without a license, the fine was beyond what the statute warranted, and because the information did not charge the two previous offences. R. v. French, 34 Q. B. (Ont.) 403. As to hard labour, see *ante*, p. 488.

In order to maintain a conviction for a third offence under s. 94 of the Quebec License Law, as amended by 50 V. c. 3, s. 11, (now Art. 926, R. S. Q.), the previous convictions need not be under the same license, nor during the same license year, but may be under a license granted for a previous license year. Desnoyers v. Bayin, 43 L. C. J. 225; R. v. Black, 43 Q. B. (Ont.) 180.

Section 102 of the Act relates to the statement of offences in the information and other proceedings.

It is not necessary in a conviction to mention the statute under which the conviction takes place, further than it is referred to in the form of conviction given in the schedule. See R. v. Strachan, 20 C. P. (Ont.) 182.

Prior to the passing of this Act it was held that the person to whom the liquor was sold, should be named or described. R. v. Cavanagh, 27 C. P. (Ont.) 537.

Where no person is mentioned, and a subsequent charge is made, evidence outside the conviction would have to be resorted to, to prove the identity of the charge and the defendant. Similarity of name would not alone be sufficient, and where the name was wholly unknown, it would especially be a question of external evidence. R. v. Strachan, 20 C. P. (Ont.) 182-7.

An information stated that defendant, "a licensed hotelkeeper in the town of Peterborough, did, on Sunday, the 2nd July, 1876, at the hotel occupied by him in the said town, dispose of intoxicating liquor to a person who had not a certificate therefor, etc.," and the conviction thereunder stated that the defendant was convicted "upon the information and complaint of J. Q., the above named complainant, and another, before the undersigned," etc., "for that the said defendant," etc., in the words of the information. The court held that the person to whom the liquor was sold should have been named or described, but that such an objection was only tenable on motion to quash the information when before the magistrate; that it sufficiently appeared that the hotel was a licensed hotel, at which liquor was allowed to be sold; that a sale "at" the hotel was equivalent to a sale "therein or on the premises thereof," and that it sufficiently appeared that the defendant was "the proprietor in occupancy, or tenant, or agent in occupancy." It was held also that the words "and another" could be treated as surplusage, it appearing in fact that J. Q. was the only complainant. R. v. Cavanagh, 27 C. P. (Ont.) 537.

A conviction for that one H. "did keep his bar-room open, and allow parties to frequent and remain in the same contrary to law," was held clearly bad as showing no offence. So a conviction for that the said H. did sell wine, beer and other spirituous or fermented liquors, to wit, "one glass of whiskey, contrary to law," not alleging that the sale was without license, was held bad for uncertainty, as not showing whether the offence was for selling without a license, or during illegal hours. R. v. Hoggard, 30 Q. B. (Ont.) 152.

A conviction under 40 Geo. III. c. 4, for selling liquor without license was quashed because the information stated that "the defendant was in the habit of selling spirituous liquor without license," without charging any specific offence, and not shewing time nor place, nor that the liquors were sold by retail, and also because the conviction directed the defendant to pay the costs of the prosecution without specifying the amount. R. v. Ferguson, 3 O. S. 220. But it was no objection, under 29 & 30 V. c. 51, s. 254, that the costs of conveying the defendant to gaol in the event of imprisonment were specified. Reid v. McWhinnie, 27 Q. B. (Ont.) 289.

In Ried v. McWhinnie, 27 Q. B. (Ont.) 289, it was held sufficient to state the offence in the conviction as selling "a certain spirituous liquor called whiskey," though s. 254 of the 29 & 30 V. c. 51, which created the offence, mentioned, "intoxicating liquor of any kind," for intoxicating liquor and spirituous liquor were used in the Act as convertible terms, and in the Customs Act of the same session, whiskey was recognized as a spirituous liquor. The offence alleged was selling a certain quantity, to wit, one pint." This was held sufficient without negativing that it was a sale in the original packages, within the exemption in s. 252 of the Act, for it would be judicially noticed that a pint was less than five gallons or twelve bottles, which the packages must at least have contained. *Ib.*

The following conviction for selling spirituous liquors by retail contrary to law, namely—"That A. B., of etc., merchant, and shopkeeper, did within the space of six calendar months, now last past, in the year aforesaid, at etc., sell and vend a certain quantity of spirituous liquors, in less quantity than one quart, to wit, one pint, etc., without license for that purpose, previously obtained, contrary to the form of the statute, in such case made and provided," was held bad in substance, in leaving it doubtful under which of the statutes, 40 Geo. III. c. 4; 6 Wm. IV. c. 2; 6 Geo. IV. c. 4—and for what offence the conviction was made. Wilson v. Graybiel, 5 Q. B. (Ont) 227.

A defendant had been convicted of two offences, one under the 49th section for selling "without the license by law required

therefor," and one under s. 61, for allowing liquors sold by him, and for the sale of which a wholesale license was required, to be consumed on the premises, and the conviction adjudged "for his said offence to forfeit and pay the sum of $20," the conviction was held bad in not shewing for which offence the penalty was imposed. R. v. Young, 5 O. R. 184 (*a*).

Where a statute imposes a fine for the first offence, and the conviction is for a fine, it has been held not necessary to specify whether the conviction was for the first or second offence, as from the punishment awarded, the court would imply the first offence. R. v. Strachan, 20 C. P. (Ont.) 182.

Where a particular act constitutes the offence, it is enough to describe it in the words of the legislature, and a conviction under (Ont.) 32 V. c. 32, alleging that the defendant sold spirituous liquors by retail without license, stating time and place, was held sufficient without a statement of kind and quantity. R. v. King, 20 C. P. (Ont.) 246; *Re* Donnelly, 20 C. P. (Ont.) 165.

A conviction for selling liquor without license is bad, if it do not specify the day on which the offence was committed. R. v. French, 2 Kerr, 121; see the form of conviction, Schedule G.

Where the jurisdiction of the justice appeared on the conviction, the offence being alleged to have happened at the town of Moncton, where it was heard and tried, and the conviction being in the form prescribed by the (N. B.) R. S. c. 138, and the place of sale spoken of at the trial appearing to be known to all parties, and no objection having been then made that it was not within the jurisdiction of the justices, it was held that the jurisdiction sufficiently appeared, though it was not shown by positive evidence that the offence was committed within the limits of the town of Moncton. *Ex parte* Dunlop, 3 Allen, 281.

A conviction under 28 V. c. 22, for selling liquor without a license, omitted to state that defendant had been convicted of selling "by retail." It was held on appeal to the quarter sessions that the offence was not sufficiently stated in the conviction, and it was accordingly quashed. It was also held that the proper time for applying to amend the conviction under the 29 & 30 V. c. 50,

was at the time it was made, and that it could not afterwards be amended under the provisions of that Act. Bird v. Brian, 3 L. C. G. 60.

In an appeal from a conviction for selling liquor contrary to c. 22 of the (N. S.) Revised Statutes, the court will allow the original summons to be amended. Taylor v. Marshall, 2 Thomson, 10.

The 103rd section of the Act, provides that the forms given in the schedule thereto shall be sufficient, and the general rule is, that a conviction following the forms prescribed will be good, if sustained by the evidence. R. v. Strachan, 20 C. P. (Ont.) 182; Reid v. McWhinnie, 27 Q. B. (Ont.) 289.

Under s. 105, a conviction is not void for defects in form or substance, if there is jurisdiction and evidence to prove the offence, and no greater penalty is imposed than authorized by the Act.

The conviction must show jurisdiction in the magistrate, by stating the place where the offence was committed. This section does not cure an objection of this kind, for it only applies provided it can be understood from the conviction that the same was made for an offence within the jurisdiction of the justice. R. v. Young, 5 O. R. 184 (*a*). In this case the evidence did not show where the offence was committed, though a place was mentioned which the magistrate knew perfectly well was within the jurisdiction.

In R. v. Allbright, 9 P. R. (Ont.) 25, the court refused, on the return of a *certiorari*, to amend a conviction for selling liquor in the sentencing part, by striking out of the conviction the award of "hard labour."

A conviction, under the Act, for selling liquor without a license purporting to be made by three magistrates, but signed by two only, was returned with a *certiorari*. It was held, that if this was an objection at all it was only ground for sending back the writ, that the third magistrate might sign the conviction, but not a ground for quashing it. R. v. Young, 7 O. R. 88. But the court inclined to the opinion, that there was nothing in the objection. See R. v. Smith, 46 Q. B. (Ont.) 442.

A *certiorari* will not lie to remove a conviction under the Act, where the conviction has been affirmed and amended on appeal. R. v. Grainger, 46 Q. B. (Ont.) 196.

By s. 106, in any prosecution or proceeding, under this Act, in which proof is required respecting any license, a certificate, under the hand of the license inspector of the district, shall be *prima facie* proof of the existence of a license, and of the person to whom the same was granted or transferred; and production of such certificate shall be sufficient *prima facie* evidence of the facts therein stated, and of the authority of the license inspector without any proof of his appointment or signature.

It seems that magistrates have not the right, where a formal existing license is produced, to go behind it for the purpose of enquiring, not into the simple issue, is the defendant licensed or unlicensed, but whether certain preliminary requisites have or have not been complied with before the license produced had been given to the tavern-keeper. The quashing of a by-law, under which a certificate has been granted, and license issued for the sale of spirituous liquors, does not nullify the license, and a conviction for selling liquor without license cannot therefore, under these circumstances, be supported. R. v. Stafford, 22 C. P. (Ont.) 177.

The 55 V. c. 14, s. 1, repeals s. 9 of the R. S. O. c. 61, and enacts that on the trial of any proceeding, matter or question under any Act of the Legislature of Ontario, or on the trial of any such proceeding, matter or question before any justice of the peace, mayor, or police magistrate, in any matter cognizable by such justice, mayor, or police magistrate, the party opposing or defending, or the wife or husband of the party opposing or defending, shall be competent and compellable to give evidence therein. Under the former Act the parties were competent only where the matter was not a crime.

An information under the 54th section of the "Liquor License Act," for selling intoxicating liquors on a Sunday, was held to be an information for a crime within the meaning of s. 9 of the R. S. O. c. 61, and therefore the defendant could not be compelled to give evidence against himself—the general policy of the law not com-

pelling any man to criminate himself—where, therefore, in a prosecution for selling liquor on a Sunday, the defendant was compelled to give evidence which established the charge, and there was no other evidence, the conviction was quashed. R. v. Roddy, 41 Q. B. (Ont.) 291; followed in R. v. Sparham, 8 O. R. 570; see also R. v. Lackie, 7 O. R. 437. See *ante*, p. 408.

Under section 108, where the appliances usually found in taverns are found in any place, it is deemed a place in which liquor is kept for the purpose of sale, unless the contrary is proved by the defendant.

It is for the magistrate trying the case, to determine whether the "contrary is proved" by the defendant, in any prosecution within the meaning of this section. See R. v. Bennett, 30. R. 45.

Under s. 110, a light in the bar is *prima facie* evidence of sale in cities, towns and incorporated villages.

Where it was proved, in one case, that an hotel was "in," and in two others that it was "at" Portage La Prairie, and it appeared that, under the municipal Act, there were three municipalities of the same name, namely the county, the town, and the municipality, the court held that this did not prove that the hotel was in a city or town, and therefore the case was not necessarily brought within this clause. R. v. Grannis, 5 M. L. R. 152.

Section 112 of the Act is amended by the 53 V. c. 56, s. 113, by adding thereto the following sub-section (3): "For the purposes of this section any person, being an owner or lessee in actual occupation and possession of the premises, or any one who, being in actual occupation and possession, leases or sub-lets any part thereof in which liquors are kept for sale, barter or trading therein, or in which they are sold or consumed, shall be deemed to be an occupant, unless such leasing or subletting shall have received the consent in writing of the board of license commissioners."

Under section 112, the occupant of the house in which the offence is committed, is personally liable to the penalty, though the act was done by some other person, who cannot be proved to have acted under the direction of the occupant. Where a married woman is lessee of the premises, and the husband in her absence

sells liquor without a license, the wife is liable to conviction under this section. R. v. Campbell, 8 P. R. (Ont.) 55.

A wife who sells liquor at the husband's place of business in his absence is his agent, so that the husband may be convicted for the act of the wife. R. v. McCauley, 14 O. R. 643.

The 112th section applies where the act complained of was done either by the occupant or by some other person. R. v. Breen, 36 Q. B. (Ont.) 84.

It seems that if the act of sale by the person other than the occupant, were an isolated act, and wholly unauthorized by him, and not in any way in the course of his business, but a thing done wholly by the unwarranted or wilful act of the subordinate, the occupant might escape personal liability. R. v. King, 20 C. P. (Ont.) 246.

The statute points at two distinct classes of offenders; first, those who sell liquor without a license, and second, those who, having such license, sell liquor within the prohibited hours. In the latter case, though the tavern may be the property of the defendant, unless he is in occupancy as proprietor, or as tenant or agent, he is not liable. Thus, if the owner of a tavern, but not occupying it or carrying on the business, had gone into it and sold a glass of liquor, he would not be within the Act. So if a stranger, a mere trespasser, went into the tavern, either in the absence of, or against the will of the actual tenant or occupant, and not in any way as the agent of the occupant, and sold liquor to another person, he would not be within the Act. R. v. Parlee, 23 C. P. (Ont.) 359.

Under section 114, the burden of proving the existence of a license, where such is required to legalize the act, is upon the defendant. Though the general rule of law is that the burden of proof lies on the party who substantially asserts the affirmative, there is an exception in this case, and in a prosecution for selling liquor without license, it is for the defendant to show his license, not for the informant to negative its existence. *Re* Barrett, 28 Q. B. (Ont.) 559; *ex parte* Parks, 3 Allen, 237.

When a party is prosecuted for an act which he cannot lawfully do without license, the possession of the license is a matter

of defence and not of proof by the prosecutor. R. v. McNicol, 11 O. R. 659; Thibault, q.t. v. Gibson, 12 M. & W. 88.

And for these reasons, it is no objection to a conviction for selling liquor without license, that it does not shew that the defendant is not licensed. R. v. Young, 7 O. R. 88; see also R. v. Bryant, 3 M. L. R. 1.

The 115th section of the Act relates to the attendance and competency of witnesses.

Under the former statute, the informer was a competent witness, being expressly made so by the statute. R. v. Strachan, 20 C. P. (Ont.) 182.

The license inspector has no pecuniary interest in any part of the penalty, and he is a competent witness, even where he lays the information. R. v. Fearman, 22 O. R. 456.

Sub-section 2 of s. 118, regarding appeals was repealed by 53 V. c. 56, s. 14, and other provisions substituted therefor.

In Ontario the right of search given by R. S. c. 194, s. 130, may be exercised without any preliminary statement of the purpose for which the search is to be made. A formal demand of admittance is sufficient. R. v. Sloan, 18 A. R. 482.

In R. v. Porter, reported in 13 C. L. T. 301, it was held by two judges of the Court of Appeal that a licensed hotel keeper is personally responsible for the refusal of his servant to admit an officer claiming the right of search under this section. The rest of the court held that s. 112 of the Act did not apply, but is limited to offences connected with sale, barter and traffic, which seems to be the correct conclusion.

The defendants were committed for trial for obstructing a peace officer acting under a search warrant issued on an information charging that there was reasonable ground for the belief that spirituous liquors were being unlawfully kept for sale, contrary to the Act, in an unlicensed house. It was held that the search warrant must be deemed to have been issued under s. 131 of the Act (amended by 55 V. c. 51, s. 12) which gives power to force an entrance into the premises, but contains no provision for punishing an obstruction, and consequently the proceedings against the

defendants must be taken under s. 263 of the Code. R. v. Hodge, 23 O. R. 450.

LIVERY STABLE.

"The Municipal Act," 55 V. c. 42, s. 510, authorizes the licensing of owners of livery stables, and of horses for hire. A by-law, passed under this section, required every person owning or keeping a livery stable, or letting out horses for hire, to pay a license fee. Defendant was convicted under this by-law for that "he did keep horses for hire" without having paid the license fee. The conviction was held valid, because keeping horses for hire was in effect within the meaning of the statute and by-law, the same as being the owner of a livery stable. R. v. Swalwell, 12 O. R. 391. See *ante*, p. 372.

LOTTERIES.

Every one is guilty of an indictable offence and liable to two years' imprisonment and to a fine not exceeding two thousand dollars, who—

(*a*) makes, prints, advertises or publishes, or causes or procures to be made, printed, advertised or published, any proposal, scheme or plan for advancing, lending, giving, selling, or in any way disposing of any property, by lots, cards, tickets, or any mode of chance whatsoever; or

(*b*) sells, barters, exchanges or otherwise disposes of, or causes or procures, or aids or assists in, the sale, barter, exchange or other disposal of, or offers for sale, barter or exchange, any lot, card, ticket or other means or device for advancing, lending, giving, selling or otherwise disposing of any property, by lots, tickets or any mode of chance whatsoever.

Every one is guilty of an offence and liable on summary conviction to a penalty of twenty dollars, who buys, takes or receives any such lot, ticket or other device as aforesaid.

Every sale, loan, gift, barter or exchange of any property, by any lottery, ticket, card, or other mode of chance depending upon or to be determined by chance or lot, is void, and all such property so sold, lent, given, bartered or exchanged, is liable to be forfeited

to any person who sues for the same by action or information in any court of competent jurisdiction.

No such forfeiture shall affect any right or title to such property acquired by any *bona fide* purchaser for valuable consideration, without notice.

This section includes the printing or publishing, or causing to be printed or published, of any advertisement, scheme, proposal or plan of any foreign lottery, and the sale or offer for sale of any ticket, chance or share, in any such lottery, or the advertisement for sale of such ticket, chance or share.

This section does not apply to :—

(*a*) the division by lot or chance of any property by joint tenants or tenants in common, or persons having joint interests (*droits indivis*) in any such property ; or

(*b*) raffles for prizes of small value at any bazaar held for any charitable object, if permission to hold the same has been obtained from the city or other municipal council, or from the mayor, reeve or other chief officer of the city, town or other municipality, wherein such bazaar is held ; and the articles raffled for thereat have first been offered for sale and none of them are of a value exceeding fifty dollars ; or

(*c*) any distribution by lot among the members or ticket holders of any incorporated society established for the encouragement of art, of any paintings, drawings, or other work of art produced by the labour of the members of, or published by or under the direction of such incorporated society.

(*d*) the Credit Foncier du bas Canada, or to the Credit Foncier Franco-Canadien. Code, s. 205.

Under s. 575 of the Code, if there are good grounds for believing that any house, room, or place is used for the purpose of carrying on a lottery, or for the sale of lottery tickets, authority may be obtained to enter and search the same, and to take into custody all persons found therein, and to seize all instruments or devices for the carrying on of such lottery, and all lottery tickets found in such house or premises.

By the Imperial Act, 10 and 11 Wm. III. c. 17, all lotteries are declared to be public nuisances. The Imperial Act, 12 Geo. II. c. 28, superseded the 10 and 11 Wm. III. c. 17, with respect to lotteries of horses, carriages and other personal chattels. Clark v. Donnelly, R. & J. Dig. 1619. This Act is in force here. Cronyn v. Widder, 16 Q. B. (Ont.) 356. *Ib.* 378.

The complainant went to the defendant's place of business, and having been told by defendant that in certain places on two shelves there were in cans of tea a gold watch, a diamond ring, or $20 in money, he paid $1, and received a can of tea, which, containing an article of small value, he handed the can back, paid an additional 50 cents, and received another can which also contained an article of small value. He handed this can back, also paid another 50 cents, and secured another can which also contained an article of small value. He then refused to pay any more money and went away, taking the third can and the article in it with him. On this state of facts the defendant was convicted, in that he unlawfully did sell certain packages of tea, being the means of disposing of a gold watch, a diamond ring, $20 in money by a mode of chance, against the form of the statute, etc. It was held that the transaction came within the terms of this section and the conviction was valid, also that s. 87 of the Act as to summary convictions, Code, s. 889, applied to cure any defect in the conviction. R. v. Freeman, 18 O. R. 524.

The defendant held a kind of concert in a certain hotel in Winnipeg, and there proceeded to sell boxes of what he called "Parker's Pacific Pens." Before selling the pens, he placed in an empty box 100 envelopes, each containing a $1 bill; 10 envelopes with a $5 bill in each; 5 envelopes with a $10 bill in each of them, and one envelope with a $50 bill, making altogether $250 in 116 envelopes. He also placed in the box 116 envelopes containing only blank pieces of paper. Every person paying one dollar for one box of pens was entitled to draw one envelope, and persons paying $5 for a box of pens could draw eight envelopes. But he would not take more than $5 from any person in order, as he said, to protect himself; because if one man took the 232

envelopes he would be $18 out of pocket, besides the 232 boxes of pens. If the $50 bill was drawn before two-thirds of the pens were sold, he would put another $50 bill in an envelope and fifty envelopes with blank papers. He said he did not sell the envelopes. He would not take $20 for one of them, but he sold the pens and distributed the money to advertise the pens. A box of the pens was worth not more than ten cents. This was held to contravene the Act. The court also held that it was not necessary to enquire whether the alleged object of the accused, the advertising of this particular kind of pens, was his real object or a subterfuge. An Act constituting an offence under the statute would appear to be equally an offence, if done to attract attention to particular wares, or if the article disposed of had an intrinsic value, which might be an inducement to purchase it. The sale of lottery tickets would be equally an offence, whether a direct or an indirect profit be intended, or if no profit be sought or expected. R. v. Parker, 13 C. L. T. 316.

The defendant placed in his shop window a globular glass jar, securely sealed, containing a number of buttons of different sizes. He offered to the person who should guess the number nearest to the number of buttons in the jar, a pony and cart, which he exhibited in his window, stipulating that the successful one should buy a certain amount of his goods. It was held that as the approximation of the number of buttons depended upon the exercise of judgment, observation and mental effort, this was not a "mode of chance" for the disposal of property within the meaning of the Act. R. v. Jamieson, 7 O. R. 149.

The defendant, being the proprietor of a newspaper, advertised in it that whoever should guess the number nearest to the number of beans which had been placed in a sealed glass jar, in a window in a public street, should receive a gold piece, the person making the next nearest guess, a set of harness, and the person making the third nearest guess, a $5 gold piece; any person desiring to compete, to buy a copy of the newspaper, and to write his name and the supposed number of the beans on a coupon to be cut out of the paper. It was held that as the approximation of the

number depended as much upon the exercise of skill and judgment as upon chance, this was not a "mode of chance" for the disposal of property within the meaning of the Act. R. v. Dodds, 3 O. R. 390. And it seems that the Act only applies to the unlawful disposal of some existing real or personal property.

When one hundred and forty-nine lots of land were sold by lottery, the person getting No. 1 ticket to have the first choice; it was held that this was a lottery, though it did not appear that there was any difference in the value of the lots. The lottery consisted in having a choice of the lots, and that choice was to be determined by chance. Power v. Canniff, 18 Q. B. (Ont.) 403.

A sale of land by lot in which there were two prizes, was held to be within the 12 Geo. II. c. 28. Marshall v. Platt, 8 C. P. (Ont.) 189; see also Lloyd v. Clarke, 11 C. P. (Ont.) 248.

An information to forfeit land sold by lottery, contrary to 12 Geo. II. c. 28, may be filed by a private individual, and need not be by the Attorney-General, or any public officer. Mewburn v. Street, 21 Q. B. (Ont.) 498.

LUMBER.

The Act respecting the culling and measuring of lumber in the Provinces of Ontario and Quebec, R. S. C. c. 103, s. 35, imposes penalties on cullers, who offend against the provisions of the Act, or on any person acting as a culler without license, *Ib.* s. 36, or any supervisor or culler who deals in lumber, *Ib.* s. 37, or is guilty of wilful neglect of his duty or of partiality in the execution of the duties of his office. *Ib.* s. 38 Under s. 39, assaulting a culler, in the execution of his duty, under the Act, renders the party liable to a penalty not exceeding forty dollars and not less than twenty dollars. So under s. 40, it is an offence against the Act, to forge or counterfeit any stamp, directed to be provided for use or the impression of the same, on any article of lumber, or to knowingly deface or remove any of the marks or letters marked, indented or imprinted in or upon any article of lumber, after the same has been culled or measured under the Act. This Act was amended by the 52 V. c. 18.

MAINTENANCE.

This is the officious intermeddling in a suit, that in no way belongs to one, by maintaining or assisting either party with money or otherwise to prosecute or defend it. It is a misdemeanour punishable by fine and imprisonment. Champerty is a species of maintenance. It is the unlawful maintenance of a suit in consideration of some bargain to have part of the thing in dispute or some profit out of it. See Carr v. Tannahill, 30 Q. B. (Ont.) 223; Kerr v. Brunton, 24 Q. B. (Ont.) 395.

Champerty is punishable at common law. Scott v. Henderson, 2 Thomson, 116. Acts of maintenance or champerty are justifiable, when the party has an interest in the thing in variance, and at the present day the court would be very loth to declare an act of this kind to be an offence criminally indictable, unless some corrupt motive were manifestly present, or there was danger of oppression or abuse. Allan v. McHeffey, 1 Oldright, 121.

From the decision in Smith v. McDonald, 1 Oldright, 274, that the crown must first eject the occupant before selling land, of which it is not in possession, it would seem that the law as to champerty is binding on the crown.

A sharing in the profits, derived from the success of the suit, is essential to constitute champerty. Hilton v. Woods, L. R. 4 Eq. 432; Hartley v. Russell, 2 S. & St. 244. See as to champerty, *re* Cannon, Oates v. Cannon, 13 O. R. 705.

MAINTENANCE OF WIFE, CHILD, ETC.

Every one who has charge of any other person unable, by reason either of detention, age, sickness, insanity or any other cause, to withdraw himself from such charge, and unable to provide himself with the necessaries of life, is, whether such charge is undertaken by him under any contract, or is imposed upon him by law, or by reason of his unlawful act, under a legal duty to supply that person with the necessaries of life, and is criminally responsible for omitting, without lawful excuse, to perform such duty if the death of such person is caused, or if his life is endangered, or his health has been or is likely to be permanently injured by such omission. Code,

s. 209, and every one who as parent, guardian or head of a family is under a legal duty to provide necessaries for any child under the age of sixteen years, is criminally responsible for omitting without lawful excuse to do so while such child remains a member of his or her household, whether such child is helpless or not, if the death of such child is caused or if his life is endangered, or his health is, or is likely to be permanently injured by such omission.

Every one who is under a legal duty to provide necessaries for his wife, is criminally responsible for omitting, without lawful excuse so to do, if the death of his wife is caused, or if her life is endangered, or her health is, or is likely to be permanently injured by such omission. Code, s. 210.

Every one who, as master or mistress, has contracted to provide necessary food, clothing or lodging for any servant or apprentice under the age of sixteen years is under a legal duty to provide the same, and is criminally responsible for omitting, without lawful excuse, to perform such duty, if the death of such servant or apprentice is caused, or if his life is endangered, or his health has been or is likely to be permanently injured by such omission. Code, s. 211.

Every one is guilty of an indictable offence and liable to three years' imprisonment who, being bound to perform any duty specified in sections two hundred and nine, two hundred and ten and two hundred and eleven without lawful excuse neglects or refuses to do so, unless the offences amount to culpable homicide. Code, s. 215, as amended by the 56 V. c. 32.

When a husband is charged, under s. 210 (2) of the Code, with neglecting to support his wife, it is necessary to prove that the life of the wife has been endangered or her health permanently injured by the neglect to provide her with necessary food. See as to former law. R. v. Scott, 28 L. C. J. 264.

It is also necessary to prove that the defendant is the husband of the prosecutrix; that the wife is in need of food, clothing and lodging; that the husband is able to provide the same, but without lawful excuse neglects so to do. The wilful refusal or neglect to provide food, clothing or lodging, without lawful excuse, is what constitutes the crime. If the refusal is attributable solely to want

of ability, or the wife is better able to support herself than the husband is to support her, or if she is in no need whatever of support and does not ask food or require it, or she is living with another man as his wife, or without justification she absents herself from her husband's roof, and without excuse refuses to return, in these and similar cases it would be absurd to convict the husband as a criminal, and it must be held that there is "lawful excuse" for what otherwise might be held wilful refusal or neglect. R. v. Nasmith, 42 Q. B. (Ont.) 242.

In addition to the obligation to maintain, under this section, the 207th section of the Code declares that all persons, who, being able to work, and thereby maintain themselves and families, wilfully refuse or neglect to do so, are vagrants, and liable to punishment under the Act. But under the 210th section an obligation to maintain must be made out. A man cannot be convicted under this section, who offers to take back his wife, although her refusal to return is sufficiently grounded on his ill usage, such offer negativing the refusal to support as well before as after the offer. Flannagan v. Bishop Wearmouth, 8 E. & B. 451.

Notwithstanding the provisions of the Acts relating to the separate property of a married woman, such woman who, deserted by her husband and having no means of maintaining her children, leaves them and neglects to provide for them, cannot be convicted on that ground as a vagrant. Peters v. Cowie, L. R. 2 Q. B. D. 131.

If the husband refuse to maintain the wife because she has left him and has committed adultery, he cannot be convicted. R. v. Flinton, 1 B. & Ad. 227. But it is no defence that he is an industrious man and is constantly at work. Carpenter v. Stanley, 33 J. P. 38.

A justice, in proceeding under this section, exercises a judicial discretion. R. v. Shortis, 1 Russ. & Geld. 70.

The wife is now made a competent witness, under the Act. Prior to the passing of the statute it was ruled that she could not give evidence. R. v. Bissell, 1 O. R. 514. See the 56 V. c. 31.

So the defendant is also a competent witness. R. v. Meyer, 11 P. R. (Ont.) 477.

The prisoner was indicted for having unlawfully refused to provide necessary food and clothing for the prosecutrix, his wife, under s. 19 of the R. S. C. c. 162. The wife was tendered by the crown as a competent witness to prove marriage, under s-s. 2. The court held that the wife, though a competent witness to prove the offence in other respects, was not a competent witness on her own behalf to prove the marriage. R. v. Willis, 1 W. L. T. 46. But she would be now, under the 56 V. c. 31.

MANSLAUGHTER.

(*See* MURDER.)

MARRIAGE.

Section 277 of the Code, makes it an indictable offence to procure or assist in procuring a feigned or pretended marriage. S. 278 punishes polygamy, conjugal union, or plural marriages. S. 279, makes the solemnization of marriage without authority an indictable offence, and s. 280 is directed against persons who have authority but solemnize any marriage in violation of the laws of the province in which the marriage is solemnized.

Prosecutions for the offence of unlawfully solemnizing marriage must be brought within two years. Code, s. 551 (*b*) (iii).

There must be some form of contract to bring the case within s. 278 of the Code, and the mere fact of cohabitation between two persons, each of whom is married to another person, will not sustain a conviction for unlawfully living and cohabiting in conjugal union. R. v. Labrie, 7 Mont. L. R. Q. B. 211. As to the proof on the trial of offences against s. 278 (*b*), (*c*) & (*d*) of the Code. See s. 706; see also bigamy, *ante*, p. 363.

MARRIED WOMEN.

No presumption shall be made that a married woman committing an offence does so under compulsion because she commits it in the presence of her husband. Code, s. 13.

Prior to this Act the general rule was that if a crime were committed by a married woman, in the presence of her husband, the law presumed that she acted under his immediate coercion, and

excused her from punishment, but if she committed an offence in the absence of her husband, even by his order or procurement, her coverture would be no defence. The presumption, however, that the wife acted under coercion might be rebutted, and if it appeared that she was principally instrumental in the commission of the crime, acting voluntarily and not by restraint of her husband, although he was present and concurred, she would be guilty and liable to punishment. See R. v. Cohen, 11 Cox, 99. And a wife who took an independent part in the commission of a crime, such as larceny when her husband was not present, was not protected by her coverture. R. v. John, 13 Cox, 100. The former rule exempting the wife did not apply to treason, murder, or manslaughter. R. v. Manning, 2 C. & K. 903; R. v. Cruse, 8 C. & P. 541.

But a wife is not liable for a robbery committed under coercion from her husband. R. v. Dykes, 15 Cox, 771. And the rule of exemption applied to theft, receiving stolen goods knowing them to be stolen, uttering counterfeit coin, and misdemeanours generally. In these latter cases, to which the rule applies, a wife committing the offence in the presence of her husband is excused unless it is shown affirmatively that she was not coerced.

The exceptions are confined to those cases in which personal injuries have been effected by violence or coercion, and though the "Married Woman's Property Act" in England enables a wife to proceed criminally against her husband, for the protection and security of her own separate estate, yet these Acts do not enable a married woman to take criminal proceedings against her husband for defamatory libel. R. v. Lord Mayor, 16 Cox, 81.

A married woman was lessee of certain premises, in which her husband sold liquor without a license, and it was held that she was liable to punishment, though the sale took place in her absence. R. v. Campbell, 8 P. R. (Ont.) 55.

MASTER AND SERVANT.

Section 521 of the Code provides that every one is guilty of an indictable offence who wilfully breaks any contract made by him, knowing, or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with

others, will be to endanger human life, or to cause serious bodily injury, or to expose valuable property to destruction or serious injury, and the offender is liable, on summary conviction before two justices of the peace, or on indictment, to a penalty not exceeding one hundred dollars, or to three months' imprisonment with or without hard labour.

Under s. 454 of the Code, a servant escapes liability for the forging of trade marks or fraudulent marking of merchandize, if, on demand made by or on behalf of the prosecutor, he gives full information as to his master.

The 5 Eliz. c. 4, is not in force in Ontario, but 20 Geo. II. c. 19, is, and under ss. 3 & 4, jurisdiction is given to two or more justices, and cannot be exercised by one, and the party cannot be arrested on complaint, but must be summoned. Shea v. Choate, 2 Q. B. (Ont.) 211.

In Ontario, under R. S. c. 139, s. 9, and following sections, justices of the peace may decide disputes between master and servant, and by s. 12, they may hear complaints by servants against their employers for non-payment of wages. This Act was amended by 52 V. c. 22 and 54 V. c. 24. Under the latter Act a warrant of distress may issue in eight days.

MEDICINE AND SURGERY.

In Ontario, R. S. c. 148, as amended by 54 V. c. 26 and 56 V. c. 27, relates to the profession of medicine and surgery.

Under ss. 45 & 51 of the Act, there is no jurisdiction on default by the defendant, of payment of fine and costs, to direct imprisonment for the space of one month, unless, in addition to the payment of the fine and costs, the defendant pays the charges of conveyance to gaol. R. v. Wright, 14 O. R. 668.

The defendant who was agent for a dealer in musical instruments, undertook to cure one P. of cancer, by friction and application of a certain oil, receiving as remuneration $3 a visit, which he stated was for the medicine, being its actual cost. He admitted having practised in Germany, and that he imported the specific in question by the gross. It also appeared that he pre-

scribed other medicine for the patient besides the oil. This was held to be practising medicine, and that the defendant was rightly convicted of doing so for gain or hope of reward, without registration under the Act. R. v. Hall, 8 O. R. 407.

Medicine is any substance, liquid or solid, that has the property of curing or mitigating disease, or that is used for that purpose. The defendant attended a couple of sick persons for which he received payment, but he neither prescribed nor administered any medicine, nor gave any advice, his treatment consisting of merely sitting still and fixing his eyes on the patient. It was held that this was not practising medicine, and as the private prosecutor appeared to have a pecuniary interest in the conviction, costs were awarded against him on quashing the conviction. R. v. Stewart, 17 O. R. 4.

Under s. 23 of 46 & 47 V. c. 19, of the province of Manitoba, a conviction of a person for practising as a veterinary surgeon, without proper qualification, is good, although it does not allege any particular act done. *Re* Bibby, 6 M. L. R. 472.

MENACES AND THREATS.

Sections 403 to 406 of the Code govern these offences. It is immaterial whether the menaces or threats are of violence, injury or accusation, to be caused or made by the offender, or by any other person, see s. 405 (*b*). The offence of threatening to accuse any person of an infamous crime with intent to extort money, etc. will be committed, though the accusation was not intended to be made to a magistrate. R. v. Robinson, 2 Mood, 14, and though the valuable thing sought to be gained was the sale of a horse. R. v. Redman, 35 L. J. M. C. 89.

So the threat need not be of an accusation against the person threatened; threatening a father with an accusation against the son is sufficient. R. v. Redmon, L. R. 1 C. C. R. 12. See s. 405 (*a*).

When letters threatening to accuse of crime, with intent to extort are sent, evidence of the truth of the accusation, will not be allowed in defence. R. v. Cracknall, 10 Cox, 408.

Section 403 of the Code makes it an indictable offence to send, deliver, or utter, or directly or indirectly cause to be received

knowing the contents thereof, any letter or writing demanding of any person, with menaces and without any reasonable or probable cause, any property, chattel, money, valuable security or other valuable thing. The words "without any reasonable or probable cause" apply to the money demanded, and not to the accusation constituting the threat. R. v. Mason, 24 C. P. (Ont.) 58; R. v. Gardiner, 1 C. & P. 479; R. v. Hamilton, 1 C. & K. 212.

A mere request, without a threat, is no offence, R. v. Robinson, 2 East, P. C. 1111; nor is an offer to give information if money is sent, R. v. Pickford, 4 C. & P. 227; but a letter stating that an injury is intended and the writer will not interfere to prevent it, unless money is sent, amounts to an offence. R. v. Smith, 1 Den. C. C. 510.

A demand for money by letter, threatening bodily violence, or to charge with adultery, is an offence, under this section. R. v. Chalmers, 10 Cox, 450.

The menace under s. 404 of the Code, must be such as to influence a reasonable mind. R. v. Walton, L. & C. 288. It is immaterial that the person has no money at the time of the demand, R. v. Edwards, 6 C. & P. 515; and a conviction may take place though the money was paid. R. v. Robertson, L. & C. 483.

The menace must be of such a nature and extent as to unsettle the mind of the person on whom it operates, and take away from his acts that element of free voluntary action which alone constitute consent. R. v. Walton, 9 Cox, 268.

If a policeman, professing to act under legal authority, threaten to imprison a person on a charge, not amounting to an offence in law, unless money be given him, and the person believe the policeman and give him the money, the policeman may be indicted for the offence of demanding money with menaces with intent to steal, although the offence is completed, and he might also be indicted for stealing the money. R. v. Robertson, 10 Cox, 9.

Whether the crime of which the person was accused was actually committed is not material, in this, that the prisoner is equally guilty if he intended, by such accusation, to extort money.

But it is material in considering the question whether the intention of the prisoner was to extort money or merely to compound a felony. R. v. Richards, 11 Cox, 43.

Where money is obtained by frightening the owner into handing it over, the prisoner may be convicted of larceny. R. v. Lovell, 8 Q. B. D. 185.

Threatening to use any force, violence or restraint or to inflict any injury, damage, harm or loss, or in any manner to practice intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting at any election, is a misdemeanour. R. S. C. c. 8, s. 87.

MILITARY AND NAVAL STORES.

The R. S. C. c. 170, imposes various penalties on persons unlawfully using or obliterating the marks which are applied to Her Majesty's military and naval stores, to denote Her Majesty's property in the stores so marked. The burden of proof is in certain cases thrown on the offender, and when the value of the stores does not exceed twenty-five dollars, the case may be tried summarily by two justices of the peace or any recorder, stipendiary or police magistrate, or the city court of Halifax, *Ib.* s. 8; and searching for stores in the sea or any tidal or inland water, without written permission from the Admiralty, is punishable before the same tribunal. *Ib.* s. 12.

MILITIA.

The R. S. C. c. 41, s. 94, creates various offences and penalties in reference to this service.

Every one is guilty of an offence and liable, on summary conviction, to six months' imprisonment, with or without hard labour, who—

(*a*) Persuades any man who has been enlisted to serve in any corps of militia, or who is a member of or has engaged to serve in the North-West mounted police force, to desert, or attempts to procure or persuade any such man to desert; or

(*b*) Knowing that any such man is about to desert, aids or assists him in deserting; or

(*c*) Knowing any such man is a deserter, conceals such man or aids or assists in his rescue. R. S. C. c. 41, s. 109; 52 V. c. 25, s. 4; Code, s. 75.

MISCHIEF OR MALICIOUS INJURIES.

These offences are now governed by ss. 481 to 511 of the Code. Under s. 486, when any one is charged with recklessly setting fire to a forest, the magistrate may, in his discretion, if the consequences have not been serious, dispose of the matter summarily; and there are several other offences which may be dealt with by summary conviction. See s. 507, as amended by the 56 V. c. 32; also ss. 492, 501, 508, 509, 510 and 511.

Injuring or destroying private property is in general no crime but a mere civil trespass over which a magistrate has no jurisdiction, unless by statute. Powell v. Williamson, 1 Q. B. (Ont.) 155.

Section 499 (*a*) of the Code was intended to apply to wilful injuries to houses, by throwing explosive substances against or into them, with intent to destroy them or injure the inmates, and not to cases of wanton mischief or assault. See R. v. Brown, 3 F. & F. 821.

The "danger to life," to be within this section, must result from the damage done to the building, referred to in the indictment, but the enactment does not contemplate the necessity of the persons endangered being inside the building, and would include the case of persons outside, whose lives were imperilled by anything proceeding from the damaged building. R. v. McGrath, 14 Cox, 598.

An apparatus for manufacturing potash, consisting of ovens, kettles, tubs, is not a machine or engine within the meaning of s. 499 (*c*) (*i*) of the Act, the destroying or damaging of which is an indictable offence. R. v. Dogherty, 2 L. C. R. 255.

Under this section, it is not necessary that the damage done should be of a permanent kind. If the machine is rendered temporarily useless, it will be an offence within this section. Thus, plugging up the feed-pipe of a steam-engine, and displacing other parts of the engine, so as to render it temporarily useless and cause

an explosion, unless removed, comes within the Act. R. v. Fisher, L. R. 1 C. C. R. 7.

The defendant had buried a child in a graveyard, near the remains of his own father. The complainant had a parcel of ground which the sexton of the church had appropriated to his exclusive use, without any authority from the incumbent or churchwardens. The complainant subsequently extended his fence, by the like consent of the sexton only, and enclosed more ground, so that the fence crossed diagonally over the grave of defendant's child. Defendant remonstrated, but obtained no redress or removal of the fence, and proceeded to remove it himself. In process of doing so he broke a marble pillar of complainant's fence, for which he was summoned before a magistrate for "wilfully and maliciously" destroying a fence. He was fined $5, over and above the sum of $10, for damages for the injury done, and $6.50 costs. From this conviction the defendant appealed to the general sessions of the peace. It was held that although the defendant was guilty of a trespass, for which he might be mulcted in damages in a civil action, he was not liable to a fine, and that, acting under a claim of right, the act was not necessarily malicious. R. v. Bradshaw, 38 Q. B. (Ont.) 564. See Code, s. 511 (2) (*a*).

Under the former law, acts of this character must have been done unlawfully and maliciously; now if the act is done recklessly, with knowledge of its probable result, and without legal justification or excuse, or colour of right, it is considered to be done wilfully, and comes within the statute. Under the former Act where an offence was committed wrongfully and intentionally without just cause or excuse, and with full knowledge of the ownership of the property, malice might be inferred, and it need not have been proved as against the owner of the property. R. v. Smith, 77 N. S. R. 29.

Where malice is essential, the *bona fide* belief by the party that he had the right to do the act, is important as regards the intention. If the party does the act unlawfully, not believing that he has any right to take the proceeding, that would be evidence from

which malice could be inferred. R. v. Elston, 5 Allen, 2. See s. 511 (2) *a*).

Where, in a proceeding before two justices, under 1 R. S. N. B. c. 133, for wilfully cutting and carrying away timber off complainant's land, there is shown to be a *bona fide* question of title or boundaries, and the act was done under a *bona fide* claim of right, the wilfulness of the act is negatived, and the defendant should be discharged. *Ex parte* Donovan, 2 Pugsley, 389.

Every one is guilty of an indictable offence and liable to two years' imprisonment who, by any act or wilful omission obstructs or interrupts, or causes to be obstructed or interrupted, the construction, maintenance or free use of any railway or any part thereof, or any matter or thing appertaining thereto or connected therewith. R. S. C. c. 168, ss. 38 and 39. Code, s. 490.

The prisoner unlawfully altered some railway signals, at a railway station, from "all clear" to "danger" and "caution." The alteration caused a train, which would have passed the station without slackening speed, to slacken speed, and come nearly to a standstill. Another train going in the same direction, and on the same rails, was due at the station in half an hour; it was held that this was obstructing a train within the meaning of the above clause. R. v. Hadfield, L. R. 1 C. C. R. 253.

The Act is not limited to mere physical obstruction. The prisoner, who was not a servant of the railway company, stood on a railway between two lines of rails at a point between two stations. As a train was approaching, he held up his arms in the mode used by the inspectors of the line, when desirous of stopping a train between two stations. The prisoner knew that his doing so would probably induce the driver to stop or slacken speed, and his intention was to produce that effect. This, as the prisoner intended that it should, caused the driver to shut off steam and diminish speed, and led to a delay of four minutes. It was held that the prisoner had obstructed a train within the meaning of the statute. R. v. Hardy, L. R. 1 C. C. R. 278.

The prisoner, without the consent of the railway company, took a trolly, or hand-car belonging to them, and ran upon the railway

for a number of miles on a Sunday night, when ordinarily no train was reasonably to be expected to be running upon that part of the road, and he was held guilty of an offence within the section, although no train was actually interfered with. R. v. Brownell, 26 S. C. N. B. 579.

Sections 500 and 501, relate to injuries to cattle and other animals.

It was proved that the prisoner caused the death of a mare through injuries inflicted by his inserting the handle of a fork into her vagina, and pushing it into her body. There was no evidence that the prisoner was actuated by ill-will towards the owner of the mare, or spite towards the mare, or by any motive except the gratification of his own depraved taste. The jury found that the prisoner did not in fact intend to kill, maim, or wound the mare, but that he knew what he was doing would or might kill, maim, or wound the mare, and nevertheless did what he did recklessly, and not caring whether the mare was injured or not. It was held that there was sufficient malice, and that the prisoner might be convicted. R. v. Welch, L. R. 1 Q. B. D. 23.

On a charge of maliciously wounding a horse it is not necessary to prove that any instrument was used to inflict the wound. R. v. Bullock, L. R. 1 C. C. R. 115.

Defendant was convicted before two justices of the peace for having maliciously shot complainant's dog. The conviction adjudged defendant to forfeit and pay $5 as a penalty together with $50 for the amount of the injury done, as "compensation in that behalf." The conviction was held bad, as no authority is given by the 501st section, to award the amount of the injury as compensation. The amount of the whole penalty is to be arrived at by ascertaining the damage and then adding to that such sum not exceeding $100, as the justice may deem proper. The expression "over and above the amount of the injury done," does not mean that the penalty over and above, etc., is to go to the crown and the sum assessed as "the amount of injury done," is to go to the party aggrieved. R. v. Tebo, North-west Terr. Reps. 8.

The words introduced into this section of the Code "or kept for any lawful purpose," cover all animals kept in a circus or menagerie.

Under s. 58 of the R. S. C. c. 168, the offence must be unlawfully and maliciously committed, and the damage must exceed twenty dollars. Where the charge is of "wilfully and maliciously" doing an act, the omission of the word "wilfully" will not be supplied by the words "unlawfully and maliciously," and the use of the words "wilfully and maliciously" in a warrant of commitment will not suffice where the words of the statute are "unlawfully and maliciously." So a commitment in this section should allege that the damage exceeded twenty dollars. R. v. Fife, 17 O. R. 710.

As we have already seen under the Code, objections of this kind would not now prevail. See *ante*, pp. 160-276; see also s. 481.

Where a person, having a public interest (as a surveyor of highways in removing an obstruction to the highway) acts *bona fide* in the discharge of his duty, he cannot be convicted of committing wilful and malicious damage. When such person acts in good faith, it must be taken that he acts under a fair and reasonable supposition, that he had a right to do the act complained of, and the justices should not find otherwise. Denny v. Thwaite, L. R. 2 Ex. D. 21.

Under the 511th section, the conviction should clearly show whether the damage, injury, or spoil complained of is done to real or personal property, stating what property and what is the amount which the justice has ascertained to be reasonable compensation for such damage, injury or spoil.

The English Act uses the words "wilfully or maliciously" committing damage, etc., and it was held that there must be proof of actual damage to the realty itself, and mere damage to uncultivated roots or plants growing upon the realty is insufficient. In this case, the defendant had gathered mushrooms in a field belonging to the plaintiff. They were of value to the latter, but they grew spontaneously and were entirely uncultivated. No damage was done to the grass or hedges and it was held there was no offence within this section. Gardner v. Mansbridge, 19 Q. B. D. 217.

The appellant's premises adjoined a public road on the opposite side of which there grew a chestnut tree, which overhung the road to within a few feet of the appellant's premises. The appellant cut off certain portions of the tree, contending that he had a right to do so in order to protect his property from the nuisance caused by stones which boys threw at the blossoms, and also from the nuisance caused by the branches interfering with the entrance of light and air to his dwelling. The court held that the appellant wilfully committed damage to the tree, and that he did not act under a fair and reasonable supposition that he had a right to do the acts complained of. Hamilton v. Bone, 16 Cox, 487. See Code, s. 511 (2) (*a*).

Under s-s. 2 (*a*) of s. 511, whether the defendant has shown a reasonable supposition on his part that he had a right to do the act complained of, is a fact to be determined by the justice, and his decision upon a matter of fact will not be reviewed. But this assumes that the defendant has given evidence to that effect, and that there is a conflict of evidence on the point. Where the whole facts shew that the matter or charge itself is one in which such reasonable supposition exists, or in other words that the case and evidence are all one way in that respect, and in favour of the defendant, the same rule does not apply. R. v. McDonald, 12 O. R. 381; R. v. Malcolm, 2 O. R. 511, distinguished. The provisions of s-s. 2, s. 511, are applicable to the whole Act. See "The Interpretation Act," R. S. C. c. 1, s. 7, s-s. 5.

A conviction charging that defendant at a time and place named, wilfully and maliciously took and carried away the window-sashes out of a building owned by one C., against the form of the statute, without alleging damage to any property, real or personal, and without finding damage to any amount was held bad. R. v. Caswell, 20 C. P. (Ont.) 275.

MISDEMEANOUR.

Independently of some statutory authority justices of the peace, out of sessions, have no power to try misdemeanours in a summary manner. R. v. Carter, 5 O. R. 651.

The distinction between felony and misdemeanour is now abolished. Code, s. 535.

MURDER, MANSLAUGHTER.

Homicide is the killing of a human being by another, directly or indirectly, by any means whatsoever. Code, s. 218.

A child becomes a human being within the meaning of this Act when it has completely proceeded in a living state, from the body of its mother, whether it has breathed or not, whether it has an independent circulation or not, and whether the navel-string is severed or not. The killing of such child is homicide when it dies in consequence of injuries received before, during or after birth. *Ib.* s. 219.

Homicide may be either culpable or not culpable. Homicide is culpable when it consists in the killing of any person, either by an unlawful act or by an omission, without lawful excuse, to perform or observe any legal duty, or by both combined, or by causing a person by threats or fear of violence, or by deception, to do an act which causes that person's death, or by wilfully frightening a child or sick person.

Culpable homicide is either murder or manslaughter.

Homicide which is not culpable is not an offence. *Ib.* s. 220.

Procuring by false evidence the conviction and death of any person by the sentence of the law shall not be deemed to be homicide. *Ib.* s. 221.

No one is criminally responsible for the killing of another unless the death take place within a year and a day of the cause of death. The period of a year and a day shall be reckoned inclusive of the day on which the last unlawful act contributing to the cause of death took place. Where the cause of death is an omission, to fulfil a legal duty, the period shall be reckoned inclusive of the day on which such omission ceased. Where death is in part caused by an unlawful act and in part by an omission, the period shall be reckoned inclusive of the day on which the last unlawful act took place or the omission ceased, whichever happened last. *Ib.* s. 222.

No one is criminally responsible for the killing of another by any influence on the mind alone, nor for the killing of another by any disorder or disease arising from such influence, save in either case by wilfully frightening a child or sick person. *Ib.* s. 223.

Every one who, by any act or omission, causes the death of another kills that person, although the effect of the bodily injury caused to such other person be merely to accelerate his death while labouring under some disorder or disease arising from some other cause. Code, s. 224.

Every one who, by any act or omission, causes the death of another kills that person, although death from that cause might have been prevented by resorting to proper means. *Ib.* s. 225.

Every one who causes a bodily injury, which is of itself of a dangerous nature to any person, from which death results kills that person, although the immediate cause of death be treatment proper or improper applied in good faith. *Ib.* s. 226.

Culpable homicide is murder in each of the following cases:

(*a*) If the offender means to cause the death of the person killed;

(*b*) If the offender means to cause to the person killed any bodily injury which is known to the offender to be likely to cause death, and is reckless whether death ensues or not;

(*c*) If the offender means to cause death or, being so reckless as aforesaid, means to cause such bodily injury as aforesaid to one person, and by accident or mistake kills another person, though he does not mean to hurt the person killed;

(*d*) If the offender, for any unlawful object, does an act which he knows or ought to have known to be likely to cause death, and thereby kills any person, though he may have desired that his object should be effected without hurting any one. *Ib.* s. 227.

Culpable homicide is also murder in each of the following cases, whether the offender means or not death to ensue, or knows or not that death is likely to ensue:

(*a*) If he means to inflict grievous bodily injury for the purpose of facilitating the commission of any of the offences in this section mentioned, or the flight of the offender upon the commission or attempted commission thereof, and death ensues from such injury; or

(*b*) If he administers any stupefying or overpowering thing for either of the purposes aforesaid, and death ensues from the effects thereof; or

(*c*) If he by any means wilfully stops the breath of any person for either of the purposes aforesaid, and death ensues from such stopping of the breath.

The following are the offences in this section referred to:—Treason and the other offences mentioned in Part IV. of this Act, piracy and offences deemed to be piracy, escape or rescue from prison or lawful custody, resisting lawful apprehension, murder, rape, forcible abduction, robbery, burglary, arson. Code, s. 228.

Culpable homicide, which would otherwise be murder, may be reduced to manslaughter if the person who causes death does so in the heat of passion caused by sudden provocation.

Any wrongful act or insult, of such a nature as to be sufficient to deprive an ordinary person of the power of self-control, may be provocation if the offender acts upon it on the sudden, and before there has been time for his passion to cool.

Whether or not any particular wrongful act or insult amounts to provocation, and whether or not the person provoked was actually deprived of the power of self-control by the provocation which he received, shall be questions of fact. No one shall be held to give provocation to another by doing that which he had a legal right to do, or by doing anything which the offender incited him to do in order to provide the offender with an excuse for killing or doing bodily harm to any person.

An arrest shall not necessarily reduce the offence from murder to manslaughter because the arrest was illegal, but if the illegality was known to the offender it may be evidence of provocation. *Ib.* s. 229.

Culpable homicide, not amounting to murder, is manslaughter. *Ib.* s. 230.

The Code has, to a large extent, changed the definition of murder and manslaughter. Formerly unlawful homicide, with malice aforethought, was murder, and it is so still, because where

there is malice the killing must be intentional as required by the Code.

Malice in its legal sense means a wrongful act done intentionally without just cause or excuse. McIntyre v. McBean, 13 Q. B. (Ont.) 542; Poitevin v. Morgan, 10 L. C. J. 97.

On every charge of murder, where the act of killing is proved against the prisoner, the law presumes the fact to have been founded in malice until the contrary appears. R. v. McDowell, 25 Q. B. (Ont.) 112; R. v. Atkinson, 17 C. P. (Ont.) 304. And the onus of rebutting this presumption, by extracting facts on cross-examination or by direct testimony, lies on the prisoner. *Ib.*

In order the better to understand the nature of these offences' the reader is referred to the chapter on indictable offences.

Where a person does an act, the natural consequence of which is criminal, but such consequence is prevented by extraneous causes, he is nevertheless to be taken to have intended that the natural consequence of his act should result; that is to say, he is to be considered as having intended to commit the crime which would have resulted, had he not been prevented from completing his act. R. v. Duckworth, 2 Q. B. 83 (1892).

With reference to malice, it does not necessarily mean malevolence or ill-will towards the deceased, for perhaps the majority of murders are committed with a view to robbery.

Generally in cases of homicide the prisoner's act must directly and immediately occasion the death, but a person is deemed to have committed homicide, although his act is not the immediate or not the sole cause of death in the following cases: (1) If he inflict a bodily injury on another which causes surgical or medical treatment which causes death. R. v. Davies, 15 Cox, 174. The treatment must, however, be in good faith and with common knowledge and skill; (2) If he inflicts a bodily injury on another which would not have caused death, if the injured person had submitted to proper surgical or medical treatment, or had observed proper precautions as to his mode of living; (3) If by any act he hastens the death of a person suffering under any disease or injury, which apart from such act would have caused death.

If a man has a disease which in all likelihood would terminate his life in a short time, and another give him a wound or hurt, which hastens his death, this will constitute murder or manslaughter, for to accelerate the death is sufficient. R. v. Martin, 5 C. & P. 130. Code, s. 224.

Of course in such a case as this the prisoner's act hastening the death must be unlawful.

If a prisoner, having been lawfully apprehended by a police constable on a criminal charge, uses violence to the constable or to any one lawfully assisting him, which causes death, and this is done with intent to inflict grievous bodily harm, he is guilty of murder. And this is the case if the act is done only with intent to escape, but if in the course of the struggle he accidentally causes an injury, it would be manslaughter. R. v. Porter, 12 Cox, 444. See Code, s. 229.

If an officer is arresting under a warrant, he must have the warrant with him at the time. If he has not, and the prisoner does not know of its existence, the arrest will be unlawful, and if in resisting the arrest the officer is killed, it will not be murder but manslaughter. R. v. Chapman, 12 Cox, 4. See Code, s. 32.

Death resulting from fear caused by menaces of personal violence and assault, though without battery, is sufficient to support an indictment for manslaughter. R. v. Dugal, 4 Q. L. R. 350 See Code, ss. 220-223.

Where A., in unlawfully assaulting B., who at that time had in her arms an infant, so frightened the infant that it had convulsions, although previously healthy, and from the effects of which it eventually died in about six weeks, A. is guilty of manslaughter, if the jury think that the assault on B. was the direct cause of death. R. v. Towers, 12 Cox, 530. See Code, s. 220.

The general rule of law is that provocation by words alone will not reduce the crime of murder to that of manslaughter. But special circumstances attending such a provocation may be held to take the case out of the general rule. For instance, if a husband suddenly and unexpectedly hearing from his wife that she had

committed adultery, were thereupon to kill her, it might be manslaughter. R. v. Rothwell, 12 Cox, 145.

An infant two years and a half old is not capable of appreciating correction, a father therefore is not justified in correcting it, and if the infant dies owing to such correction, the father is guilty of manslaughter. R. v. Griffin, 11 Cox, 402.

Justices of the peace have little concern with the technical distinctions between murder and manslaughter. If a party is guilty of either he should be committed for trial, but it is necessary that the death should be expressly proved, for otherwise *non constat* that any offence has been committed.

As to the liability of a soldier carrying out the order of his sergeant, see R. v. Stowe, 7 N. S. R. 121.

Across a common was an unfenced and open footpath which the public had a right to use. A commoner knowingly turned a vicious horse on to the common to depasture. The horse kicked a child and caused its death, the child being at the time so near the boundary that the jury could not say whether it was on the footpath or beyond it, but found the owner of the horse guilty of culpable negligence, and convicted him of manslaughter, and the conviction was held right. R. v. Dant, 10 Cox, 102.

The spectators of a sparring match are not *particepes criminis* so that their evidence touching what occurred at the match requires corroboration. There is nothing unlawful in sparring, unless perhaps the men fight on until they are so weak that a dangerous fall is likely to be the result of the continuance of the game. Therefore, except in the latter case, death caused by an injury received during a sparring match does not amount to manslaughter. R. v. Young, 10 Cox, 371.

A medical man is bound to use proper skill and caution in dealing with a poisonous drug or dangerous instrument, and if he does not do so and death ensues he is guilty of manslaughter, but it will be otherwise if he makes an error in judgment only. R. v. Macleod, 12 Cox, 534. And to render a person liable to conviction for manslaughter, through neglect of duty, there must be such a

degree of culpability in his conduct as to amount to gross negligence. R. v. Finney, 12 Cox, 625; see ss. 212, 213 and 214 of the Code.

A grown up person, who chooses to undertake the charge of a human creature, helpless, either from infancy, simplicity, lunacy or other infirmity, is bound to execute that charge without wicked negligence, and if such person, by wicked negligence, lets the helpless creature die, that person is guilty of manslaughter.

The neglect to provide food or medical attendance for a person of full age is under certain circumstances manslaughter. R. v. Instan, 1 Q. B. 450 (1893).

Mere negligence is not enough, there must be negligence so great as to satisfy a jury that the offender had a wicked mind, in the sense of being reckless and careless, whether death occurred or not. R. v. Nicholls, 13 Cox, 75.

Where, from conscientious religious conviction that God would heal the sick, and not from any intention to avoid the performance of their duty, the parents of a sick child refuse to call in medical assistance, though well able to do so, and the child consequently dies, it is not culpable homicide. R. v. Wagstaffe, 10 Cox, 530. See further R. v. Downes, 1 Q. B. D. 25; R. v. Morley, 8 Q. B. D. 571.

The prisoner was convicted of manslaughter in killing his wife, who died on the 10th November, 1881. The immediate cause of her death was acute inflammation of the liver, which the medical testimony proved might be occasioned by a blow or a fall against a hard substance. On the 17th October, 1881, the prisoner had knocked his wife down with a bottle. She fell against a door, and remained on the floor insensible for some time. She was confined to her bed soon afterwards, and never recovered. Evidence was given of frequent acts of violence committed by the prisoner upon his wife within a year of her death, by knocking her down and kicking her on the side, and this evidence was held properly admissible, and that there was evidence to submit to the jury that the disease which caused her death was produced by injuries inflicted by the prisoner. Theal v. R., 7 S. C. R. 397.

The fact of people drinking together, even to excess, does not, of itself, constitute an offence on the part of the others, although one should die from the effects of the drink. But if a man, profiting by the weakness of another, whether that other be a child, or a man of weak mind, or a man subject to an uncontrollable passion for drink, should encourage such person to drink immoderately, in a quantity likely to cause him severe sickness or death, and death ensues, he, who tempted the other, is responsible for his death. If the one so pressing the other to drink, acted with the intention to kill, he is guilty of murder. If he acted without such intention, but intending to make the other sick, even in sport, he is guilty of manslaughter. R. v. Lortie, 9 Q. L. R. 352.

The offence of attempting to procure any person to commit murder under s. 234 of the Code may be committed by publishing in a newspaper an article inciting to murder, the article being considered as a separate incitement to each subscriber of the paper, and the fact that a large number of persons are encouraged, instead of only one, does not alter the nature of the offence. R. v. Most, L. R. 7 Q. B. D. 244.

A man, who has an unlawful and malicious intent against another, and in attempting to carry it out, injures a third person, is guilty of what the law deems malice against the person injured.

The prisoner, in striking at a man, struck and wounded a woman beside him, and on the trial the jury found that the blow was unlawful and malicious, and did, in fact, wound her, but that the striking of her was purely accidental, and not such a consequence of the blow as the prisoner ought to have expected, he was, nevertheless held guilty. R. v. Latimer, 17 Q. B. D. 359.

The omission of the words " of malice aforethought " from the averment of the intent in an indictment for wounding with intent to murder, constituted a substantial defect therein, and was not cured by s. 143 of the R. S. C. c. 174. R. v. Carr, 26 L. C. J. 61. See now Code, s. 611, and form FF. See also R. v. Deery, 26 L. C. J. 129; R. v. Bulmer, 5 L. N. 287.

Homicide is excusable when necessary to the preservation of a man's own life, or of his wife, child, or parent. Thus, where a

son had reasonable grounds for believing, and honestly believed that his father was about to cut his mother's throat, the shooting of the father, under such circumstances, was held excusable homicide. R. v. Rose, 15 Cox, 540. See as to homicide under the necessity of procuring food to prolong life. R. v. Dudley, 14 Q. B. D. 273, 560.

Any one who leaves a hole in the ice, or an excavation in the earth, unguarded is guilty of manslaughter, if any person loses his life by accidentally falling therein while the same is unguarded. Code, s. 255.

Any one found committing murder or manslaughter, or an attempt to murder, or being accessory after the fact to murder, may be arrested by any one without warrant. Code, s. 552, part xviii.

An acquittal or conviction of murder is a bar to the same homicide charging it as manslaughter, and an acquittal or conviction of manslaughter is a bar to the same homicide charging it as murder. Code, s. 633, s-s. 2. And on a count charging murder, if the evidence proves manslaughter, but does not prove murder, the jury may find the accused not guilty of murder, but guilty of manslaughter, but shall not, on that count, find the accused guilty of any other offence. Code, s. 713, s-s. 2.

NAVIGABLE WATERS.

The R. S. C. c. 91, enables the Minister of Marine to cause the removal of obstructions caused by wrecks in navigable waters, and sawdust, edgings, slabs, bark or rubbish are not allowed to be thrown into any navigable river or stream. *Ib.* s. 7.

NAVIGATION OF CANADIAN WATERS.

The R. S. C. c. 79, contains various provisions respecting navigation. Wilful disobedience of the rules of navigation prescribed by the Act, entails a penalty not exceeding two hundred dollars, and not less than twenty dollars. *Ib.* s. 4. Penalties are recoverable before two justices of the peace on the oath of one credible witness. *Ib.* s. 8.

NECESSARIES OF LIFE.

As to the duty to provide the necessaries of life for those unable either by reason of infancy, age, sickness, insanity, or any other cause to provide for themselves, see ss. 209, 210, 211 and 215 of the Code.

NORTH-WEST MOUNTED POLICE.

The R. S. C. c. 45, s. 18, provides that the commissioner enquire into any alleged breach of discipline, and witnesses may be examined on oath, in the manner prescribed by "The Summary Convictions Act." Offences under ss. 24 and 25 may be prosecuted before a commissioner or a stipendiary magistrate, or any justice of the peace, in any part of Canada, and "The Summary Convictions Act" shall apply to such prosecutions. *Ib.* s. 25. See 52 V. c. 25, ss. 3, 4 and 5.

NORTH-WEST TERRITORIES.

The Act in relation to this part of the Dominion is the R. S. C. c. 50. This Act is not *ultra vires*, and prior to the 54 & 55 V. c. 22, s. 9, a judge and a justice of the peace, with the intervention of a jury of six, had power to try a prisoner charged with treason.

The information in such case (if any information be necessary) may be taken before the judge alone. An objection to the information would not be waived by pleading to the charge after objection taken.

At the trial in such case, the evidence may be taken by a shorthand reporter. R. v. Reil, 2 M. L. R. 321, confirmed on appeal to the Privy Council. Reil v. R., 10 App. Cas. 675. See 54-55 V. c. 22, s. 9, which alters the law as to trial by jury.

NUISANCES.

A common nuisance is an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health, property or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of any right common to all Her Majesty's subjects. Code, s. 191.

Every one is guilty of an indictable offence and liable to one year's imprisonment or a fine who commits any common nuisance which endangers the lives, safety or health of the public, or which occasions injury to the person of any individual. Code, s. 192.

Any one convicted upon any indictment or information for any common nuisance other than those mentioned in the preceding section, shall not be deemed to have committed a criminal offence; but all such proceedings or judgments may be taken and had as heretofore to abate or remedy the mischief done by such nuisance to the public right. Code, s. 193.

There seems to be no authority for a justice convicting a party summarily of a nuisance, and fining for the offence, Bross v. Huber, 18 Q. B. (Ont.) 286, and though the obstruction of a highway is a public nuisance, a conviction by a magistrate for such obstruction and order to pay a continuing fine until the removal of such obstruction was held bad, as unwarranted by any Act of Parliament. R. v. Huber, 15 Q. B. (Ont.) 589.

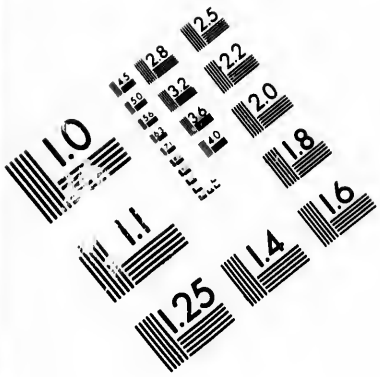
To constitute a public nuisance, the thing complained of must be such as in its nature or its consequences is a nuisance, an injury or a damage to all persons who come within the sphere of its operation, though it may be in a greater or less degree. Little v. Ince, 3 C. P. Ont. 545; R. v. Meyers, 3 C. P. (Ont.) 333.

Throwing noxious matter into Lake Ontario, or any other public navigable water, is a public nuisance, and renders the party committing it liable to an indictment. Watson v. Toronto G. & W. Co., 4 Q. B. (Ont.) 158. Obstructions to navigable rivers are public nuisances. Brown v. Gugy, 14 L. C. R. 213.

So the non-repair of a highway, or the obstruction thereof, is a nuisance, indictable at common law. R. v. Paris, 12 C. P. (Ont.) 450.

The proper remedy for a public nuisance is by indictment. Small v. G. T. R. Co., 15 Q. B. (Ont.) 283.

The circumstance that the thing complained of furnishes, on the whole, a greater convenience to the public than it takes away, is no answer to an indictment for a nuisance. R. v. Bruce, 10 L. C. R. 117; R. v. Ward, 4 A. & E. 384.



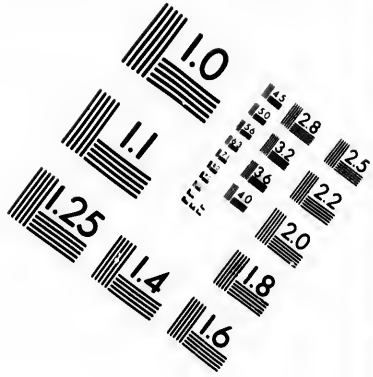
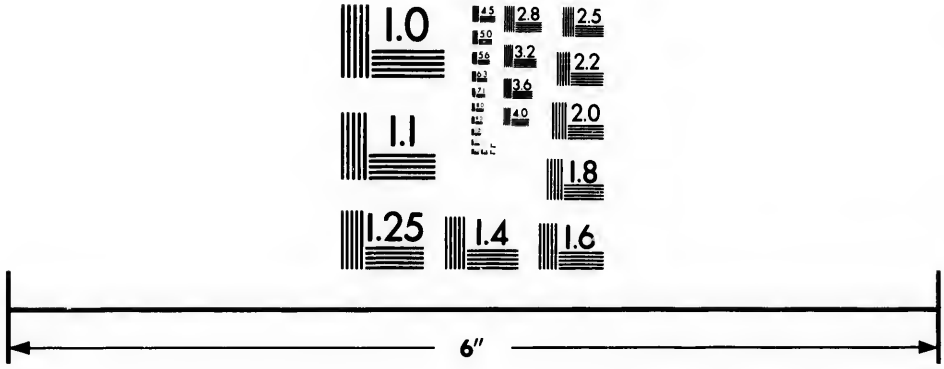
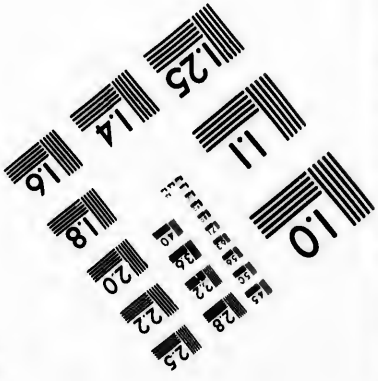


IMAGE EVALUATION TEST TARGET (MT-3)





Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

2.8
3.2
3.6
2.5
2.2
2.0
1.8
1.1
1.0

A conviction for obstructing a highway is bad, unless it appears on the face of it that the place was a public highway. R. v. Brittain, 2 Kerr, 614.

OATHS.

Every justice of the peace or other person who administers, or causes or allows to be administered, or receives or causes or allows to be received any oath or affirmation touching any matter or thing whereof such justice or other person has not jurisdiction or cognizance by some law in force at the time being, or authorized or required by any such law, is guilty of an indictable offence and liable to a fine not exceeding fifty dollars, or to imprisonment for any term not exceeding three months.

Nothing herein contained shall be construed to extend to any oath or affirmation before any justice in any matter or thing touching the preservation of the peace, or the prosecution, trial or punishment of any offence, or to any oath or affirmation required or authorized by any law of Canada, or by any law of the province wherein such oath or affirmation is received or administered, or is to be used, or to any oath or affirmation, which is required or authorized by the laws of any foreign country to give validity to an instrument in writing or to evidence designed or intended to be used in such foreign country. R. S. C. c. 141, s. 1. Code, s. 153.

The R. S. C. c. 141, respecting extra judicial oaths has been repealed. See 56 V. c. 31, Code, schedule two.

Prior to the passing of this Act, a magistrate taking an affidavit without authority, was guilty of a misdemeanour, and a criminal information would lie against him for so doing. Jackson v. Kassel, 26 Q. B. (Ont.) 346.

The provision of the 23 V. c. 2, s. 28, that all affidavits required thereunder, might be taken before "any justice of the peace," did not empower a justice of the peace to administer the oath anywhere in the province; it merely authorized him to do so in the place where he acted as justice. R. v. Atkinson, 17 C. P. (Ont.) 295.

The 56 V. c. 31, s. 26, provides that any judge, notary public, justice of the peace, police or stipendiary magistrate, recorder, mayor, or commissioner, authorized to take affidavits to be used

either in the Provincial or Dominion Courts, or any other functionary authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making the same before him in the form in the schedule A to this Act, in attestation of the execution of any writing, deed, or instrument, or of the truth of any fact, or of any account rendered in writing. Schedule A.

I, A. B., do solemnly declare that (*state the fact or facts declared to*), and I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of "The Canada Evidence Act," 1893. Declared before me , at this day of A.D. 18 .

It is an indictable offence to administer an oath to bind the person taking the same, to commit any crime punishable by death or imprisonment for more than five years. Code, s. 120. And other oaths are made unlawful by s. 121 of the Code. Any one found offending against either of these sections, may be arrested without warrant by any one. Code, s. 552, part VII.

OATHS OF ALLEGIANCE.

The Act respecting oaths of allegiance, R. S. C. c. 112, prescribes the form of the oath of allegiance, and enacts that all justices of the peace and other officers lawfully authorized, either by virtue of their office or special commission from the crown for that purpose, may administer the oath of allegiance under the Act in any part of Canada.

OBSCENE BOOKS.

Selling obscene books is an indictable offence, Code, s. 179, even although a good ulterior object is intended to be served thereby. R. v. Hicklin, L. R. 3 Q. B. 360. The obtaining obscene prints and libels for the purpose of afterwards publishing and disseminating them, is an act done in commencing a misdemeanour, and therefore an indictable offence. Dugdale v. R., 1 E. & B. 435.

In Ontario the 55 V. c. 42, s. 489, s-s. 33, empowers councils to pass by-laws for preventing the posting of indecent placards, writings, or pictures, etc.

OBSTRUCTING PUBLIC OR PEACE OFFICERS.

Every one is guilty of an indictable offence and liable to ten years' imprisonment who resists or wilfully obstructs any public officer in the execution of his duty or any person acting in aid of such officer.

Every one is guilty of an offence and liable on indictment to two years' imprisonment, and on summary conviction before two justices of the peace to six months' imprisonment with hard labour, or to a fine of one hundred dollars, who resists or wilfully obstructs—

(*a*) any peace officer in the execution of his duty or any person acting in aid of any such officer ;

(*b*) any person in the lawful execution of any process against any lands or goods or in making any lawful distress or seizure. R. S. C. c. 162, s. 34. Code, s. 144. See as to the trial of these offences, Code, s. 783 (*e*).

OFFICE, OFFENCES BY PERSONS IN.

Every one, who is an officer or servant of, or a person employed by the minister on any public work under the minister, and who wilfully and negligently violates any by-law, order or regulation of the department, if such violation causes injury, or risk of injury to any property or person, or renders such risk greater than it would have been but for such violation, although no actual injury occurs, is guilty of a misdemeanour. R. S. C. c. 36, s. 27. There is a similar provision in the Act respecting the Department of Railways and Canals, R. S. C. c. 37, s. 17, in respect to disobedience of regulations by officers or servants, as well as in the Act respecting Government Railways. R. S. C. c. 38, s. 59.

So every person who wilfully obstructs any officer or employee of a Government Railway, in the execution of his duty, shall, on summary conviction, be liable to a penalty not exceeding forty dollars. R. S. C. c. 38, s. 63.

So obstructing or impeding an inspector, or other officer acting in execution of *The Animal Contagious Diseases Act*, renders the offender liable to a penalty not exceeding one hundred dollars, and the inspector may apprehend the offender and take him before a justice, but without the order of the justice, he is not to be detained longer than twenty-four hours. R. S. C. c. 69, s. 38.

As to misconduct of sheriffs or officers entrusted with the execution of writs, see Code, s. 143, and as to obstructing officers, *Ib.* s. 144.

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 such public officer he certified as 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 those services. This was held to be misbehaviour in office and an indictable offence at common law, and that to constitute such offence it was not essential that pecuniary damage should have resulted to the public by reason of such irregular conduct, nor that the defendant should have acted from corrupt motives. R. v. Arnoldi, 23 O. R. 201. See Code, s. 133. As to selling an office, see Code, s. 137.

ONTARIO FACTORIES ACT.

The R. S. O. c. 208, s. 5, enacts that it shall not be lawful to employ in a factory, any child, young girl or woman, so that the health of such child, young girl or woman is likely to be permanently injured. The party offending is, upon summary conviction, liable to imprisonment for a period not exceeding six months, or to a fine of not more than $100, with costs of prosecution, and in default of immediate payment of such fine and costs, then to imprisonment. By other sections of the Act, further provisions are made in reference to the employment of children, young girls or women, and it is required that every factory be kept in a cleanly

state, and free from effluvia arising from any drain, privy or other nuisance. See sections 6, 7, 11.

Under section 14, it is not lawful to keep a factory so that the safety of any person employed therein is endangered, or so that the health of any person employed therein is likely to be permanently injured. A violation of this provision renders the offender liable to imprisonment for a period of not more than twelve months, or to a fine of not more than $500, with costs of prosecution.

The parent of any child or young girl, employed in a factory, in contravention of this Act shall, unless such employment is without the consent, connivance, or wilful default of such parent, be guilty of an offence in contravention of this Act, and liable to a fine of not more than $50, and costs of prosecution.

Under sections 18 and 19, employers must send notice to the inspector in case of death or bodily injury, from fire or accident, sufficient to prevent the person injured returning to work within six days after the injury.

Every person, who wilfully makes a false entry in any register, notice, certificate or document, required by this Act, to be left or served or sent, or who wilfully makes or signs a false declaration under this Act, or who knowingly makes use of any such false entry or declaration, shall be liable to imprisonment for a period not exceeding six months, or to a fine of not more than $100, with costs of prosecution. *Ib.* s. 22.

When the inspector is obstructed in the execution of his duties under this Act, the person obstructing him shall be liable to a fine not exceeding $30, and where the inspector is obstructed in a factory, the employer shall be liable to a fine not exceeding $30, or where the offence is committed at night, $100. *Ib.* s. 24, s-s. 7.

Justices of the peace may grant a warrant, authorizing the inspector to enter any room or place actually used as a dwelling, if they have reasonable cause to suppose that any enactment of the Act is contravened in any such room or place as aforesaid. *Ib.* s. 26.

Under s. 38 of the Act, information must be laid within two months, or where the offence is punishable at discretion by

imprisonment, within three months after the commission of the offence. The description of the offence in the words of the Act, or in similar words, shall be sufficient in law.

Any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany the description of the offence, in the Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived, shall be required on the part of the informant.

By s. 39 of the Act, all prosecutions may be brought before any two of Her Majesty's justices of the peace, in and for the county where the penalty was incurred, or the offence was committed, or wrong done, and in cities and towns where there is a police magistrate, before such police magistrate. The ordinary procedure in the case of summary convictions is to apply in this case. See the 52 V. c. 43.

PARTNER.

As to theft by co-partner, see Code, s. 311. As to when an innocent partner escapes liability, see Code, s. 379.

PATENTS.

The R. S. C. c. 61, s. 54, provides that any patented article, sold, or offered for sale, must be stamped with the date of the patent applying thereto, and non-compliance entails a penalty not exceeding one hundred dollars. Under s. 55, it is a misdemeanour for a person, who is not the patentee of an article, sold by him, to stamp or mark it with the name, or any imitation of the name of the patentee; or for any person to offer for sale as patented, any article not patented, for the purpose of deceiving the public. And wilfully making any false entry in any register or book, or any false or altered copy of any document relating to the purposes of the Act, is a misdemeanour. *Ib.* s. 56.

PAWNBROKERS.

The R. S. C. c. 128, contains the law on this head. Under s. 6, every pawnbroker, who in any case stipulates for, or takes a

higher rate of interest than the Act prescribes, is liable to a penalty not exceeding fifty dollars. By s. 7, every person who counterfeits, forges or alters any note or memorandum given by a pawnbroker for goods, pledged, or causes or procures the same to be done, or utters, vends or sells such note or memorandum, knowing the same to be counterfeited, forged or altered, with intent to defraud any person, shall be liable, on summary conviction, to imprisonment for any term not exceeding three months.

The law in Ontario is contained in the R. S. c. 155.

A person cannot be considered a "pawnbroker" by engaging in a single act of receiving or taking a pawn or pledge, as this would not be exercising the trade of a pawnbroker. R. v. Andrews, 25 Q. B. (Ont.) 196.

The same rule prevails under "The Quebec Act," 34 V. c. 2, s. 69; see Perkins v. Martin, 25 L. C. J. 36.

Prior to the passing of the recent Act it was held, in Ontario, that a pawnbroker might legally charge any rate of interest agreed on between him and the pledgor. R. v. Adams, 8 P. R. (Ont.) 462.

PEACE ON PUBLIC WORKS.

The R. S. C. c. 151, is the Act respecting the preservation of peace in the vicinity of public works. Where necessary, the Act may be brought into force by proclamation within the limits of any public works. After the Act comes in force, every weapon in the hands of every person employed on the works must be delivered up, or in default the same may be seized, and the offender incurs a penalty not exceeding four dollars, and not less than two dollars, for every weapon found in his possession, *Ib.* ss. 3 and 5. The sale of intoxicating liquor is prohibited, *Ib.* s. 13. All the provisions of every law respecting the duties of justices of the peace in relation to summary convictions and orders, and to appeals from such convictions, and for the protection of justices of the peace when acting as such, or to facilitate proceedings by or before them, in matters relating to summary convictions and orders, shall, in so far as they are not inconsistent with this Act, apply to every justice of the peace mentioned in the Act. *Ib.* s. 21.

PERJURY AND SUBORNATION OF PERJURY.

Perjury is an assertion as to a matter of fact, opinion, belief or knowledge, made by a witness in a judicial proceeding as part of his evidence, upon oath or affirmation, whether such evidence is given in open court, or by affidavit or otherwise, and whether such evidence is material or not, such assertion being known to such witness to be false, and being intended by him to mislead the court, jury, or person holding the proceeding. Evidence in this section includes evidence given on the *voir dire* and evidence given before a grand jury.

Every person is a witness within the meaning of this section who actually gives his evidence, whether he was competent to be a witness or not, and whether his evidence was admissible or not.

Every proceeding is judicial within the meaning of this section which is held in or under the authority of any court of justice, or before a grand jury, or before either the Senate or House of Commons of Canada, or any committee of either the Senate or House of Commons, or before any Legislative Council, Legislative Assembly or House of Assembly or any committee thereof, empowered by law to administer an oath, or before any justice of the peace, or any arbitrator or umpire, or any person or body of persons authorized by law or by any statute in force for the time being to make an enquiry and take evidence therein upon oath, or before any legal tribunal by which any legal right or liability can be established, or before any person acting as a court, justice or tribunal, having power to hold such judicial proceeding, whether duly constituted or not, and whether the proceeding was duly instituted or not before such court or person so as to authorize it or him to hold the proceeding, and although such proceeding was held in a wrong place or was otherwise invalid.

Subornation of perjury is counselling or procuring a person to commit any perjury which is actually committed. Code, s. 145.

On a charge of perjury it is not necessary to prove that the subject matter of the perjury was material to the issue, in which the perjury was committed. R. v. Roes, 28 L. C. J. 261. Therefore, a false affirmation of a Quaker or other person who is by law

authorized to make an affirmation or declaration in lieu of an oath, may amount to perjury as well as oral evidence in open court. See the Interpretation Act, R. S. C. c. 1, s. 7 (28).

Before perjury can be assigned it must be shown that the person administering the oath had authority to do so. See R. v. Lloyd, 19 Q. B. D. 213.

The Interpretation Act, R. S. C. c. 1, s. 7 (29), provides, whenever, by an Act of Parliament, or by a rule of the Senate or House of Commons, or by an order, regulation or commission, made or issued by the Governor in Council, under any law authorizing him to require the taking of evidence under oath, an oath is authorized or directed to be made, taken or administered, such oath may be administered, and a certificate of its having been made, taken or administered, may be given by any one named in any such Act, rule, order, regulation or commission, or a Justice of the Peace having authority or jurisdiction within the place where the oath is administered. See also the 56 V. c. 31.

When an oath is administered without any authority, the person taking such oath cannot be convicted of perjury. R. v. Martin, 21 L. C. J. 156; R. v. McIntosh, 1 Hannay, 372. The person administering the oath must be exercising his jurisdiction at the time the oath is administered. McAdam v. Weaver, 2 Kerr, 176.

It is a well-known rule that the testimony of a single witness is not sufficient to convict on a charge of perjury. Two witnesses, at least, must contradict what the accused has sworn, or, at any rate, one must so contradict, and other evidence must materially corroborate that contradiction. See Code, s. 684.

The offence of perjury consists in taking a false oath in a judicial proceeding, and whether the oath is taken in a judicial proceeding before a court, at common law, or acting on a statute, it is equally an oath taken in a judicial proceeding, and punishable as perjury. R. v. Castro, L. R. 9 Q. B. 350.

Any oath or affirmation administered under the authority of any Act of the Provincial Legislatures, entails the same consequences, with respect to perjury, as if the oath were administered under the authority of an Act of the Parliament of Canada. Code, s. 145 (3).

So it is perjury to swear falsely in any province in any affidavit to be used in any other province. Code, s. 149.

The swearing falsely by a voter, at an election of aldermen for the city of Toronto, that he was the person described in the list of voters, not being made perjury by any express enactment, was held not an oath upon which, by the common law, perjury could be assigned, not being in any judicial proceeding or anything tending to render effectual a judicial proceeding. Thomas v. Platt, 1 Q. B. (Ont.) 217. But this would now be perjury under the statute, as the offence is not now confined to evidence given in judicial proceedings.

As to the indictment for perjury, see Code, s. 616, and as to the certificate of the trial at which perjury was committed, see Code, s. 691.

Under the R. S. C. c. 154, s. 4, any judge may direct the prosecution of any person who appears to be guilty of perjury in giving evidence before the court.

When the false evidence is in an affidavit or written deposition, it may be quoted according to the very terms of the deposition in which the false statements were made, so also the tenor or substance of the false statement may be charged in the information. But the true sense of everything which relates to the subject upon which perjury is assigned must be shown, but not matters which are foreign thereto. R. v. Trudel, 14 Q. L. R. 193; see form FF in schedule one.

PERSONATION.

Under the R. S. C. c. 8. s. 89, every person who, at any election of a member of the House of Commons of Canada, applies for a ballot paper in the name of some other person, whether living or dead, or a fictitious person, or having voted at any election, applies at the same election for a ballot paper in his own name, is guilty of personation and liable to a penalty, not exceeding two hundred dollars, and to imprisonment for a term not exceeding six months. Section 90 makes it a misdemeanour for a candidate to corruptly induce any person to personate any voter. Under section 103, every one who aids, abets or procures the com-

mission, by any person, of the offence of personation, is liable to a penalty not exceeding two hundred dollars, and to imprisonment for a term not exceeding six months.

If, at a parliamentary election, a man applies to the presiding officer for a ballot paper in a name other than his name of origin, or in the name by which he is generally known, but in a name which appears on the register of voters, and which was inserted therein by the overseers in the belief that it was the name of the applicant, and for the purpose of putting him on the register, he is entitled to vote, and is not guilty of the offence of personation. R. v. Fox, 16 Cox, 166.

Every one is guilty of an indictable offence, and liable to fourteen years' imprisonment, who with intent fraudulently to obtain any property, personates any person, living or dead, or administrator, wife, widow, next of kin or relation of any person. Code, s. 456.

PETROLEUM.

Under the "Petroleum Inspection Act," R. S. C. c. 102, as amended by the 56 V. c. 36, s. 10, various penalties are imposed for different offences against the Act. Under the 26th section, a penalty of one hundred dollars is imposed on every person altering any inspector's brands or marks, or counterfeiting any such brand or mark, or emptying any package marked or inspected, or improperly using or hiring or lending any inspector's brands. See 54 & 55 V. c. 49.

PETTY TRESPASS.

In Ontario, the R. S. c. 101, governs this offence, and summary proceedings may be taken before one justice of the peace.

This Act does not apply where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of. Whether he so acted is a fact to be adjudicated upon by the convicting justice, on the evidence produced before him. When he so adjudicates, the court will not review his decision on *certiorari*. R. v. Malcolm, 2 O. R. 511; see also R. S. O. c. 195.

PILOTAGE.

The R. S. C. c. 80, contains the law on this head. Every penalty, imposed by the Act, may be recovered in a summary manner before a stipendiary magistrate, police magistrate, or two justices of the peace under the "Summary Convictions Act." *Ib.* s. 101.

PIRACY.

Every one is guilty of an indictable offence who does any act which amounts to piracy by the law of nations, and is liable to the following punishment:—

(*a*) To death, if in committing or attempting to commit such crime the offender murders, attempts to murder or wounds any person, or does any act by which the life of any person is likely to be endangered;

(*b*) To imprisonment for life in all other cases. Code, s. 127.

As to piratical acts within Canada, or such acts by one who comes or is brought within Canada without being tried therefor. See Code, s. 128.

As to piracy with violence, see s. 129, and s. 130 as to not fighting pirates.

There is a right to arrest without warrant any one found committing piracy, piratical acts, or piracy with violence. Code, s. 552, VIII.

This offence at common law consists in committing those acts of robbery and depredation upon the high seas, which, if committed upon land, would have amounted to felony there.

The Imp. Stat. 12 & 13 V. c. 96, extends to Canada, and makes provision for the trial of this offence. It may be observed that our great inland lakes are, for the purposes of this offence, considered as the high seas, and our magistrates can take cognizance of piracy committed on the lakes, although in American waters, and in the same manner as if committed on the high seas. R. v. Sharp, 5 P. R. (Ont.) 135.

POLICE.

The R. S. C. c. 184, is the Act respecting the police of Canada.

POST OFFICE.

The R. S. C. c. 35, is the Act respecting the postal service; ss. 79 to 81, 83, 84, 88, 90, 91, 96, 103, 107, 110 and 111 are repealed. See Code, schedule two. Unlawfully issuing a money order with a fraudulent intent is an indictable offence, *Ib.* s. 85; or forging any postage stamp or money order, *Ib.* ss. 86 and 87. Under s. 92, enclosing any explosive substance in any letter, packet or other available matter, sent by post, is a misdemeanour. So removing from any letter any postage stamp with a fraudulent intent is a misdemeanour. *Ib.* s. 94. So it is a misdemeanour for any mail carrier to be drunk on duty. *Ib.* s. 97. The Act was amended by the 52 V. c. 20.

PRISONS.

The R. S. C. c. 183, is the Act respecting Public and Reformatory prisons. See also Code, ss. 950 to 956.

PRIZE-FIGHTING.

Section 92 of the Code defines a prize fight to mean an encounter or fight, with fists or hands, between two persons, who have met for such purpose, by previous arrangement made by or for them. To send or accept any challenge to fight, or to train for the same, or act as trainer or second to any person who intends to engage in a prize fight, or to engage as principal in a prize fight, is an offence punishable on summary conviction. Code, s. 93. See also ss. 94, 95, 96 and 97. R. S. C. c. 153, ss. 6, 7 and 10.

Mere voluntary presence at a fight does not as a matter of law necessarily render persons so present, guilty of an assault, as aiding and abetting in such fight. A prize-fight is, however, illegal, and all persons aiding and abetting therein, are guilty of assault and the consent of the persons, actually engaged in fighting, to the interchange of blows, does not afford any answer to the criminal charge of assault. R. v. Coney, 8 Q. B. D. 534.

PROCEDURE ON APPEALS TO THE JUDGE OF THE COUNTY COURT IN ONTARIO.

(*See ante, p. 221.*)

PROCESS.

The R. S. C. c. 165, s. 35, made it felony to act or profess to act under any false process of court, or anything purporting to be such process, knowing it to be false. S. 423 (*C.*) (*a*) & (*c*), and s. 424, of the Code would probably now cover this offence.

In order to convict a person of the offence of acting or professing to act under any false colour, or pretence of the process of the court it is not necessary to show that the document used bore any resemblance to the actual genuine process of that court; it is enough if he falsely and fraudulently pretends that process has issued, and that in what he does, he is acting under such process. R. v. Evans, 7 Cox, 293.

A document, appearing on the face of it, to be a mere notice by a plaintiff to a defendant, to produce accounts on the trial of a cause, though headed, "In the County Court of L." and entitled as if in a cause in that court, does not "purport" to be any process of the county court, and will not support an indictment so alleging it. R. v. Castle, 7 Cox, 375.

PROCURING PROSTITUTION.

Every one is guilty of an indictable offence and liable to two years' imprisonment with hard labour, who—

(*a*) procures, or attempts to procure, any girl or woman under twenty-one years of age, not being a common prostitute or of known immoral character, to have unlawful carnal connection, either within or without Canada, with any other person or persons; or

(*b*) inveigles or entices any such woman or girl to a house of ill-fame or assignation for the purpose of illicit intercourse or prostitution, or knowingly conceals in such house any such woman or girl so inveigled or enticed; or

(*c*) procures, or attempts to procure, any woman or girl to become, either within or without Canada, a common prositute; or

(*d*) procures, or attempts to procure, any woman or girl to leave Canada with intent that she may become an inmate of a brothel elsewhere; or

(*c*) procures any woman or girl to come to Canada from abroad with intent that she may become an inmate of a brothel in Canada; or

(*f*) procures, or attempts to procure, any woman or girl to leave her usual place of abode in Canada, such place not being a brothel, with intent that she may become an inmate of a brothel within or without Canada; or

(*g*) by threats or intimidation procures, or attempts to procure, any woman or girl to have any unlawful carnal connection, either within or without Canada; or

(*h*) by false pretences or false representations procures any woman or girl, not being a common prostitute or of known immoral character, to have any unlawful carnal connection, either within or without Canada; or

(*i*) applies, administers to, or causes to be taken by any woman or girl any drug, intoxicating liquor, matter, or thing with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connection with such woman or girl. 53 V. c. 39, s. 9; R. S. C. c. 157, s. 7; Code, s. 185.

Every one who, being the parent or guardian of any girl or woman—

(*a*) procures such girl or woman to have carnal connection with any man other than the procurer; or

(*b*) orders, is party to, permits or knowingly receives the avails of the defilement, seduction or prostitution of such girl or woman,

is guilty of an indictable offence, and liable to fourteen years' imprisonment if such girl or woman is under the age of fourteen years, and if such girl or woman is of or above the age of fourteen years to five years' imprisonment. 53 V. c. 37, s. 9; Code, s. 186. See also ss. 187 & 188 of the Code.

On an indictment for attemping 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. R. v. McNamara, 20 O. R. 489.

Every one who, being the owner and occupier of any premises, or having, or acting or assisting in, the management or control thereof, induces or knowingly suffers any girl of such age as in this section mentioned to resort to, or be in or upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man, or generally, is guilty of an indictable offence and—

(*a*) is liable to ten years' imprisonment if such girl is under the the age of fourteen years; and

(*b*) is liable to two years' imprisonment if such girl is of or above the age of fourteen and under the age of sixteen years. R. S. C. c. 157, s. 5; 53 V. c. 37, s. 3. Code, s. 187.

Prosecutions under the foregoing sections 185, 186, and 187 of the Code must be within one year from the commission of the offences. Code, s. 551, (*c*) (viii) (ix) (x).

The prisoner will be liable, under s. 187 of the Code, though the girl in question be the prisoner's daughter, and the premises in respect of which the charge is made be the home where she resides with the prisoner. R. v. Webster, 16 Q. B. D. 134.

PROSTITUTES.

(*See ante* p. 124. *See also* VAGRANCY.)

PUBLIC HEALTH.

In Ontario the R. S. c. 205 is the Act respecting the public Health; see also the 52 V. c. 42 and 56 V. c. 44.

By the 6th clause of a city by-law, passed under this statute, it was provided that before proceeding to construct, reconstruct, or alter any portion of the drainage, ventilation, or water-system of a dwelling house, etc., "the owner, or his agent, constructing the same," should file in the city engineer's office an application for a permit therefor, which should be accompanied with a specification or abstract thereof, etc., and by the 11th clause, that after the approval of such plan or specification, no alteration or deviation therefrom would be allowed, except on the application of "the owner, or the agent of the owner," to the city engineer. By s. 22

of the Act, owner is defined as meaning the person, for the time being, receiving the rent of the lands on his own account or as agent or trustee of any such person who would so receive the same if such lands and premises were let. It was held that the agent intended by the Act, and coming within the terms of the by-law, meant a person acting for the owner as trustee, or in some such capacity, etc., and did not include a plumber employed by the owner to re-construct the plumbing in his dwelling house. R. v. Watson, 19 O. R. 646.

PUBLIC LANDS.

Under the R. S. C. c. 54, s. 137, every person who, in any part of the Dominion lands, interrupts, molests or hinders any Dominion land surveyor, while in the discharge of his duty as a surveyor, is guilty of a misdemeanour. Under s. 138, every person who knowingly and wilfully pulls down, defaces, alters or removes any mound, post or monument erected, planted or placed in any original survey, is guilty of felony. Under s-s. 2 of this section, it is a misdemeanour to wilfully pull down or destroy any other landmark.

The misdemeanour, mentioned in this section, can only be committed in relation to boundaries or landmarks which have been legally placed by a land surveyor, with all the formalities required by said statute to mark the limit or line between two adjoining lots of land. R. v. Austin, 11 Q. L. R. 76.

RAILWAYS.

The 51 V. c. 29, provides for the proper working of railways. The Act has been amended by the 53 V. c. 28, the 55 and 56 V. c. 27, and the 56 V. c. 27. Under s. 291, it is a misdemeanour to place baggage, freight, merchandise or lumber cars in rear of passenger cars. So every person who is intoxicated while he is in charge of a locomotive engine, or acting as the conductor of a car or train of cars, is guilty of a misdemeanour. *Ib.* s. 292. The same rules apply to government railways. R. S. C. c. 38, ss. 57 & 58.

Section 263 provides, that when a train is overdue for half an hour, the time when it may be expected must be posted up or written with white chalk on a blackboard, and for wilful neglect a penalty of five dollars may be recovered.

Section 275 provides, that every company shall cause all thistles and other noxious weeds growing on the cleared land or ground adjoining the railway and belonging to such company, to be cut down and kept constantly cut down or to be rooted out, and a penalty of two dollars per day is imposed for neglect.

Under s. 281 of the Act, any two justices of the peace, or a stipendiary or police magistrate, may appoint or dismiss railway constables. In the Province of Quebec such appointment or dismissal must be by the judge of the Court of Queen's Bench or Superior Court, or clerk of the peace, or clerk of the crown, or judge of the sessions of the peace. A similar provision is made by the R S. C. c. 38, s. 54, s-s. 4, in reference to constables on Government railways.

Under "The Quebec Railway Act," a justice of the peace has jurisdiction to entertain a complaint against a company for obstructing a highway. The Dominion Act has not the effect of abrogating the provisions of the Quebec Act with respect to the local railways to which the Dominion Act applies. *Re* Quebec Central Ry., 11 Q. L. R. 193.

Under s. 250 of the Code, it is an indictable offence to put or throw upon or across a railway, any wood, stone, or other matter or thing, with intent to injure or endanger the safety of any person travelling or being upon any railway. See also s. 251.

So it is an indictable offence to obstruct a railway in a manner likely to cause danger to valuable property, without endangering life or person. Code, s. 489 ; see also ss. 490 and 491.

As to conveyance of cattle on railways, see Code, s. 514. As to breaches of contract by railways, see Code, s. 521, s-s. 3.

A copy of the ss. 521 and 522 of the Code must be posted up at the railway station, s. 522 ; see also *ante*, p. 519.

RAILWAY PASSENGER TICKETS.

The R. S. C. c. 110, provides that all persons selling tickets must be duly authorized, and that the company must redeem unused tickets or refund the unearned portion, if this is claimed within thirty days from the expiration of the time for which the ticket was issued. Every person offending against the Act is liable on summary conviction before a justice of the peace to a penalty not exceeding fifty dollars and not less than twenty dollars and costs, (s. 8.) Every complaint respecting an offence against the Act is to be prosecuted under the provisions of the "Summary Convictions Act." *Ib.* s. 11.

RAPE.

Rape is the act of a man having carnal knowledge of a woman who is not his wife without her consent, or with consent which has been extorted by threats or fear of bodily harm, or obtained by personating the woman's husband, or by false and fraudulent representations as to the nature and quality of the act.

No one under the age of fourteen years can commit this offence.

Carnal knowledge is complete upon penetration to any, even the slightest degree, and even without the emission of seed. R. S. C. c. 174, s. 226. Code s. 266, 56 V. c. 32.

As to the degree of force required the woman must be quite over-come by force and terror, and there must be as much resistance on her part as is possible under the circumstances so as to make the ravisher see and know that she is really resisting to the uttermost. R. v. Fick, 16 C. P. (Ont.) 379.

A husband cannot commit a rape upon his wife by carnally knowing her himself. Neither can a boy under fourteen years of age as he is presumed to be physically incapable of committing the offence. But both a husband and a boy under fourteen may be convicted as principals in the second degree and may be punished for being present aiding and abetting.

Where a married woman consented to the prisoner having connection with her, under the impression that he was her husband,

the court held that he was guilty of rape. R. v. Dee, 15 Cox, 579, and he is under the Code.

In several other cases the contrary was held and that the party was only liable to be indicted for an assault. R. v. Francis, 13 Q. B. (Ont.) 116; R. v. Barrow, L. R. 1 C. C. R. 156.

But it is submitted it is now a rape where the woman is asleep, and for that reason does not resist. See R. v. Young, 14 Cox, 114.

The crime of rape is the having connection with a woman forcibly where she neither consents before nor after. R. v. Fletcher, 8 Cox, 131.

Where the woman is an idiot or lunatic the mere proof of the act of connection will not warrant the case being left to the jury. There must be some evidence that it was without her consent, *e.g.*, that she was incapable of expressing consent or dissent, or from exercising any judgment upon the matter from imbecility of mind or defect of understanding, and if she gave her consent from animal instinct or passion it would not be a rape. R. v. Connelly, 26 Q. B. (Ont.) 317.

But where the woman is so idiotic as to be incapable of expressing assent or dissent, a party who attempts to have connection with her without her consent, is guilty of an attempt at rape, but if from her state and condition the prisoner had reason to think that she was consenting, he ought to be acquitted whether in the case of rape or an attempt at rape. *Ib.* R. v. Barrett, L. R. 2 C. C. R. 81; see also R. v. Pressy, 10 Cox, 635.

The prisoner professed to give medical and surgical advice for money. The prosecutrix, a girl of nineteen, consulted him with reference to illness from which she was suffering. He advised that a surgical operation should be performed, and under pretence of performing it, had carnal connection with the prosecutrix. She submitted to what was done, not with any intention that he should have carnal connection with her, but under the belief that he was merely treating her medically, and performing a surgical operation, that belief being wilfully and fraudulently induced by the prisoner, and it was held that he was guilty of rape. R. v. Flattery, L. R. 2 Q. B. D. 410.

A child under ten years of age, cannot give consent to any criminal intercourse, so as to deprive that intercourse of criminality; and a person may be convicted of attempting to have carnal knowledge of such child, even though she consents to the act done. R. v. Beall, L. R. 1 C. C. R. 10. See Code, ss. 268-269. But the consent in such case will render the attempt no assault. R. v. Cockburn, 3 Cox, 543; R. v. Connolly, 26 Q. B. (Ont.) 323. See however, Code, s. 261.

On a charge of attempt to commit rape, the consent of the girl is immaterial, and therefore evidence of such consent should not be received. R. v. Paquet, 9 Q. L. R. 351.

To establish the offence of unlawfully and carnally knowing a girl under the age of thirteen years, it is not necessary to prove emission of seed, and it seems that in every case where carnal knowledge constitutes a crime that crime is complete without emission upon proof of penetration. R. v. Marsden, L. R. 2 Q. B. 149 (1891) See Code, s. 266 (3), amended by the 56 V. c. 32.

The defendant was indicted and convicted for committing a rape on his daughter. The judge left it to the jury to say whether, on the evidence, the act of connection was consummated through fear or merely through solicitation. The court 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 the conviction was affirmed, the case having been properly submitted to the jury. R. v. Cardo, 17 O. R. 11.

On a trial for rape, the evidence of the prosecutrix was that the prisoner knocked her down, got on her, pulled up her clothes, and committed a rape on her. A witness proved that the prisoner stated that he did no more than her husband would have done. Evidence was admitted of a statement made by prisoner's counsel at a previous trial, on behalf of prisoner, that prisoner had had connection with the woman, with her consent, and that he had paid her $1. It was held that there was sufficient evidence of the commission of the offence, and that the statement of the prisoner's counsel was properly admitted. R. v. Bedere, 21 O. R. 189.

As to evidence in case of rape, see also R. v. Lloyd, 19 O. R. 352.

Persons found committing a rape, or attempting it, or defiling children under fourteen, may be arrested without warrant by any one. Code, s. 552, part XXI.

RECEIVING STOLEN GOODS.

Every one is guilty of an indictable offence, and liable to fourteen years' imprisonment, who receives or retains in his possession anything obtained by any offence punishable on indictment, or by any acts wheresoever committed, which, if committed in Canada after the commencement of this Act, would have constituted an offence punishable upon indictment, knowing such thing to have been so obtained. R. S. C. c. 164, s. 82; Code, s. 314.

Section 315 of the Code relates to receiving a stolen post letter or post letter-bag; section 316 to receiving property obtained by any offence punishable on summary conviction.

The act of receiving anything unlawfully obtained is complete as soon as the offender has, either exclusively or jointly with the thief or any other person, possession of, or control over such thing, or aids in concealing or disposing of it. Code, s. 317.

When the thing unlawfully obtained has been restored to the owner, or when a legal title to the thing so obtained has been acquired by any person, a subsequent receiving thereof shall not be an offence although the receiver may know that the thing had previously been dishonestly obtained. Code, s. 318.

Section 627 of the Code provides that every one charged with receiving any property knowing it to have been stolen may be indicted whether the principal offender or other party to the offence, or person by whom such property was so obtained has or has not been indicted or convicted or is or is not amenable to justice, and such accessory may be indicted either alone as for a substantive offence or jointly with such principal or other offender or person, and any number of receivers at different times may be charged with substantive offences in the same indictment, and may be tried together whether the person by whom the property was so obtained is or is not indicted with them or is or is not in custody or amenable to justice.

As to the trial of joint receivers, see Code, s. 715. As to evidence of other property stolen within twelve months, see section 716, and as to proof of a previous conviction for fraud or dishonesty, see section 717. The offence of unlawfully receiving stolen property is triable under section 783 of the Code; see also section 789.

There must be a theft of the goods, and this theft must be a crime, either at common law, or by statute, before a party can be convicted of receiving under our statute. R. v. Smith, L. R. 1 C. C. R. 266.

Thus where the evidence shewed that the stolen goods were found in the premises occupied by the prisoner, but no proof was adduced as to the person who committed the theft, the court held that though there was evidence of guilty possession to go to the jury on an indictment for larceny, a conviction for receiving could not be sustained in the absence of any evidence to shew that the goods had been stolen by some other person, and were unlawfully in the possession of some one else before they came into the prisoner's possession. R. v. Perry, 26 L. C. J. 24.

It is clear that the goods the party is charged with receiving must be stolen goods. R. v. Hancock, 14 Cox, 119. A wife, though she might have committed adultery, could not steal her husband's goods, and therefore the adulterer, receiving from her the goods which she had taken from her husband, could not be found guilty of receiving stolen goods. R. v. Kenny, L. R. 2 Q. B. D. 307. But the law is now altered if they are living apart, see Code, s. 313.

Manual possession or touch is unnecessary. In order to sustain a conviction for receiving stolen goods, it is sufficient if there be a control by the receiver over the goods. R. v. Smith, Dears. 494.

A person having a joint possession with the thief, may be convicted as a receiver. R. v. Hobson, Dears. 400.

It makes no difference whether a receiver receives for the purpose of profit or advantage, or whether he does it to assist the thief. R. v. Davis, 6 C. & P. 177.

Belief, without actual knowledge, is sufficient to maintain an indictment for receiving goods, knowing them to have been stolen. R. v. White, 1 F. & F. 665.

A husband may be convicted of receiving property which his wife has stolen voluntarily, and without restraint on his part. R. v. McCathey, L. & C. 250; 9 Cox, 251.

Recent possession of stolen property is evidence, either that the person in possession stole the property, or that he received it knowing it to be stolen. R. v. Langmead, L. & C. 427.

Before there can be a criminal receipt of goods under this statute, or at common law, the goods must be *stolen*, or at all events, the stealing, taking, extorting, embezzling, or otherwise obtaining, must amount to a crime at common law, or under the statute. For instance, if after goods are stolen, they get back into the possession of the owner, so as to be no longer stolen goods, a subsequent receipt by the prisoner will not render him liable, the goods having lost the character of stolen goods. R. v. Schmidt, L. R. 1 C. C. R. 15.

So if the *exclusive* possession still remains in the thief, a conviction for receiving cannot be sustained. It is also necessary that the defendant should, at the time of receiving the goods, know that they were stolen. R. v. Wiley, 2 Den. 37.

Independently of the statute, receiving stolen goods, knowing them to be such, is a misdemeanour.

To justify a conviction for receiving stolen property, in the case of goods found, it is not sufficient to shew that the prisoner had a general knowledge of the circumstances under which the goods were taken, unless the jury are also satisfied that he knew that the circumstances were such as constituted a larceny. R. v. Adams, 1 F. & F. 86.

On an indictment against A. for stealing, and B. for receiving goods, evidence that, on various former occasions, portions of the commodity stolen have been missed, and that the prisoners have, after such occasions, been found selling such a commodity, and that on the last occasion it was the same, was held sufficient to fix the receiver with a guilty knowledge. R. v. Nicholls, 1 F. & F. 51.

The prisoner was indicted for receiving stolen goods, knowing them to have been stolen. To prove his guilty knowledge, evidence was given that, being asked by the police as to the prices he had given, he said he did not then know, but his wife would make out

a list of them, and next day she, in his presence, produced a list, and this was held admissible in evidence against him, as a statement authorized by the prisoner to be made and handed over in his presence, to the police. R. v. Mallory, 15 Cox, 456.

When the prisoner is charged with 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. R. v. Gillis, 27 S. C. N. B. 30.

RECOGNIZANCES.

Sections 910 to 926 of the Code relate to recognizances. Under s. 910, the surety for any person charged with an indictable offence, may obtain an order to render such person to gaol, and an arrest may be made, under the order. But the Act is not to affect any existing rights of sureties. *Ib.* s. 915. When the aid of the statute is invoked, an affidavit shewing the grounds of the application, with a certified copy of the recognizance, may be laid before a judge of the Superior or County Court, having criminal jurisdiction. In other cases, the form of complaint, *ante*, p. 297, may be used, and the form of warrant there given, would be applicable for the arrest of the person charged. As to recognizances in general, see *ante*, pp. 98-99.

RESCUING.

(*See* ESCAPE. *See* ALSO SS. 159 TO 169 OF THE CODE.)

RESERVATION OF POINTS OF LAW.

A justice of the peace or police magistrate, who can act alone where two justices of the peace are required to act, but who nevertheless acts as a justice of the peace, with more extended jurisdiction than an ordinary justice of the peace, cannot reserve a case for the opinion of the court. R. v. Richardson, 8 O. R. 651. A magistrate proceeding under s. 785 of the Code may do so. See s. 742.

In Ontario in R. v. Bissell, 1 O. R. 514, the right to reserve a case was clearly recognized, but having regard to the provisions of

"The Judicature Act," it was uncertain whether a reservation to the justices of the Queen's Bench Division of the High Court of Justice was authorized. Now the reservation may be to any division of the High Court of Justice for Ontario. Code, s. 3 (*e*) (*i*) and 743.

RESTITUTION OF STOLEN PROPERTY.

As to restitution by juvenile offenders, see s. 824 of the Code. And as to restitution under that part of the Code relating to the Summary Trial of Indictable Offences, see s. 803.

Section 836 of the Code gives power to award any sum of money not exceeding one thousand dollars, by way of satisfaction or compensation for any loss of property. Section 836, provides for compensation to the *bona fide* purchaser of stolen property, and s. 838, provides for restitution in general.

An order of restitution may be made, not only when the proceeds are in the hands of the convict, but also when they are in the hands of an agent who holds them for him. R. v. Justices, 17 Q. B. D. 598; 18 Q. B. D. 314.

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

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

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

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

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

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

As to the right to take possession of and retain articles found on a person arrested to be used as evidence at the trial. See *ante*, p. 65.

Every one is guilty of an indictable offence and liable to seven years' imprisonment who corruptly takes any money or reward, directly or indirectly, under pretense or upon account of helping any person to recover any chattel, money, valuable security or other property which, by any indictable offence has been stolen, taken, obtained, extorted, converted or disposed of, unless he has used all due diligence to cause the offender to be brought to trial for the same. R. S. C. c. 164, s. 89. Code s. 156.

Every one is liable to a penalty of two hundred and fifty dollars for each offence, recoverable with costs by any person who sues for the same in any court of competent jurisdiction, who—

(*a*) publicly advertises a reward for the return of any property which has been stolen or lost, and in such advertisement uses any words purporting that no questions will be asked; or

(*b*) makes use of any words in any public advertisement purporting that a reward will be given or paid for any property which has been stolen or lost, without seizing or making any inquiry after the person producing such property; or

(*c*) promises or offers in any such public advertisement to return to any pawnbroker or other person who advanced money by way of loan on, or has bought, any property stolen or lost, the money so advanced or paid, or any other sum of money for the return of such property; or

(*d*) prints or publishes any such advertisement. R. S. C. c. 164, s. 90. Code, s. 157.

Any prosecution against the proprietor of a newspaper under the above section must be within six months. Code, s. 551 (*d*) IV.

RETURN OF CONVICTIONS.

In Ontario the R. S. O. c. 76, is the Act respecting returns of convictions, and fines by justices of the peace.

Under this Act it is a question for the jury, whether, under the circumstances of any particular case, the return made is immediate. In one case, the conviction was made on the 31st of August, and the magistrates withheld the return until the 15th of September, expecting to receive the fine every day, and intending to return it with the conviction, and, as soon as it became apparent to the magistrates that the fine would not be paid, the conviction was returned. The jury having found that the return was reasonably immediate, a verdict for the defendants was upheld. Longeway q.t. v. Avison, 8 O. R. 357. See as to returns *ante*, p. 252.

REVENUE.

"The Consolidated Revenue and Audit Act," R. S. C. c. 29, provides that every officer or person acting in any office or employment, connected with the collection or management of the revenue, who (*a*) receives bribes, (*b*) conspires to defraud the

Crown, (*c*) permits any violation of the law by any other person, (*d*) wilfully makes any false entry, or wilfully makes or signs any false certificate or return, (*e*) fails to report any known violation of the law, (*f*) demands a reward for condoning an offence, —shall be dismissed from office, and is guilty of a misdemeanour. *Ib.* s. 69.

Under section 70, every person who directly or indirectly offers a bribe to any revenue officer to influence his decision, or to induce him to connive at fraud is guilty of a misdemeanour, and so also is the officer receiving the bribe.

In regard to inland revenue, the R. S. C. c. 34, s. 86, provides that every person is guilty of a misdemeanour who puts into any packages, barrels, or casks, which have been stamped, marked, or branded, under the Act, any article or commodity subject to excise, on which the duty has not been paid. So it is a misdemeanour to refuse or neglect to aid any officer of inland revenue in the execution of his duty. *Ib.* s. 91.

Under the 94th section, it is felony to break the lock or seal, used for the security of the revenue under this Act, or to abstract any goods from any place, where the same are retained by an officer of inland revenue, or to counterfeit any label, stamp, or seal, or to perforate any vessel used for containing spirits, on which the duty has not been paid.

So obstructing officers of inland revenue in the discharge of their duty, is a misdemeanour. *Ib.* s. 98. And assaulting or threatening to assault such officers, and thereby resisting, molesting or obstructing them is felony. *Ib.* s. 99.

This Act was amended by the 53 V. c. 23, & the 54 & 55 V. c. 46, and the 55 & 56 V. c. 22.

Taking away goods which have been seized or detained is felony. *Ib.* s. 100.

If the amount of the penalty or forfeiture incurred for any offence under the Act does not exceed five hundred dollars, the same, whether the offence is made a misdemeanour or not, may be sued for and recovered, before a police or stipendiary magistrate, or any two justices of the peace having jurisdiction in the place

where the cause of prosecution arises, or wherein the defendant is served with process under the "Act respecting Summary Proceedings before Justices of the Peace," by whom the complaint against the offenders shall be dealt with, on the oath of one credible witness. The penalty may be levied, by distress and sale, or by imprisonment on default of payment; and no other justices of the peace, except those before whom the prosecution is brought, can be allowed to sit or take part therein. *Ib.* s. 113.

RIOTS AND UNLAWFUL ASSEMBLIES.

An unlawful assembly is an assembly of three or more persons who, with intent to carry out any common purpose, assemble in such a manner or so conduct themselves when assembled as to cause persons in the neighbourhood of such assembly to fear, on reasonable grounds, that the persons so assembled will disturb the peace tumultuously, or will by such assembly needlessly and without any reasonable occasion provoke other persons to disturb the peace tumultuously.

Persons lawfully assembled may become an unlawful assembly if they conduct themselves with a common purpose in such a manner as would have made their assembling unlawful if they had assembled in that manner for that purpose.

An assembly of three or more persons for the purpose of protecting the house of any one in their number against persons threatening to break and enter such house in order to commit any indictable offence therein is not unlawful. Code, s. 79.

A riot is an unlawful assembly which has begun to disturb the peace tumultuously. Code, s. 80.

Every one is guilty of an indictable offence who, being a . . . . justice of the peace, or other magistrate, or other peace officer of any county, city, town or district, having notice that there is a riot within his jurisdiction, without reasonable excuse, omits to do his duty in suppressing such riot. Code, s. 140. It is an indictable offence for every one who refuses assistance without reasonable excuse. Section 141. And every magistrate is justified in using and ordering to be used such force as he, in good faith and on reasonable and probable grounds, believes to be necessary

to suppress a riot, and as is not disproportioned to the danger which he, on reasonable and probable grounds, believes to be apprehended from the continuance of the riot. See Code, s. 40 also ss. 81, 82, 83, 84, 85 and 86.

If a magistrate, responsible for order in the district under his control, lazily, stupidly or negligently fails to take the precautions necessary to preserve order, he can be proceeded against in a criminal court, and can be called upon to answer for his neglect of duty. Such a magistrate is, therefore, fully justified in issuing a public notice to the effect that public meetings will not be permitted to be held in any place of public resort under his control, where he has reasonable grounds for believing that a breach of the peace is likely to result from the holding of any such public meeting. R. v. Cunningham, 16 Cox, 420.

Sections 85 and 86 of the Code prohibit the unlawful and forcible destruction of buildings by persons riotously and tumultuously assembled to the disturbance of the public peace.

A single person cannot be convicted of riot, in respect of any acts of his alone and independently of and not in concert with others.

A procession having been attacked by rioters, the prisoner, one of the processionists, and in no way connected with the rioters was proved during the course of the attack, to have fired off a pistol on two occasions, first in the air, and then at the rioters So far as appeared from the evidence, the prisoner acted alone and not in connection with any one else. It was held that a conviction of the prisoner jointly with a number of others for riot could not be sustained. R. v. Corcoran, 26 C. P. (Ont.) 134.

The difference between a riot and an unlawful assembly is this: The former is a tumultuous meeting of persons upon some purpose which they *actually execute* with violence, and the latter is a mere assembly of persons upon a purpose, which, if executed, would make them rioters, but which they do not execute, nor make any motion to execute. R. v. Kelly, 6 C. P. (Ont.) 372.

An example will more clearly show the difference between these three crimes: A hundred men, armed with sticks meet

together at night to consult about the destruction of a fence which their landlord has erected; this is an unlawful assembly. They march out together from the place of meeting in the direction of the fence; this amounts to a rout. They arrive at the fence, and, amid great confusion, violently pull it down; this is a riot.

To constitute a riot, the object need not be unlawful if the acts are done in a manner calculated to inspire terror. But there must be an unlawful *assembling*, therefore, a disturbance, arising among people already met together, will be a mere affray, unless, indeed, there be a deliberate forming into parties. The object must be of a local or private nature, otherwise, as if to redress a public grievance, it amounts to treason.

The gist of the offence is the *unlawful manner of proceeding*, that is with circumstances of force or violence. Therefore, assembling for the purpose of an unlawful object, and actually executing it, is not a riot if it is done peaceably.

If a man knowingly does acts that are unlawful, the presumption of law is that he intends the natural consequences of these acts, and ignorance of the law will not excuse him.

To constitute an unlawful assembly, it is not necessary that the purpose for which the persons assembled together was to do an unlawful act; an intention to do a lawful act in a violent and turbulent manner, is as much a breach of the law as if the intended act were illegal. It is the manner in which the act is intended to be done that constitutes the offence. R. v. Mailloux, 3 Pugsley, 493-513.

On a charge of riot, persons are not liable merely on account of their having been present and among the mob, even although they had the power of preventing it, unless they by word or act helped, incited or encouraged it. R. v. Atkinson, 11 Cox, 330.

All parties assembling, to obstruct the officers of the law, are guilty of an unlawful assembly, whether a riot takes place or not, and in case of homicide, in consequence of such unlawful assembly, all persons may render themselves personally responsible. R. v. McNaughten, 14 Cox, 576.

The prisoners assembled, with others, for a lawful purpose, and with no intention of carrying it out unlawfully, but with the knowledge that their assembly would be opposed, and with good reason to suppose that a breach of the peace would be committed by those who opposed it, and the court held that they could not be rightly convicted of an unlawful assembly. Beatty v. Gillbanks, 9 Q. B. D. 308.

Section 83 of the Code provides that if twelve or more persons are unlawfully, riotously and tumultuously assembled, to the disturbance of the public peace, a justice of the peace may, by proclamation, require them to disperse, and if they afterwards continue together for thirty minutes for the same purpose, they are guilty of an offence. But there may be a riot, and the liability to punishment therefor exists, although this proclamation is not made. The proclamation, if neglected, only renders those who would be punishable as rioters, liable to the greater punishment under this section. See R. v. Furzey, 6 C. & P. 81.

A justice of the peace is not justified in causing a meeting to be forcibly dispersed, on the ground merely that he believes and has reasonable and probable grounds for believing, that the meeting was held with an unlawful intent, unless the meeting be in itself unlawful. O'Kelly v. Harvey, 10 L. R. Ir. 285.

The offence of opposing the reading of the "Riot Act" and assembling after proclamation to disperse contrary to s. 83 of the Code, cannot be prosecuted after the expiration of one year from its commission. Code s. 551 (*c*) (i).

And any one found committing the offences respecting the reading of the "Riot Act," or engaged in the riotous destruction of or damage to buildings, may be arrested without warrant by any one. Code, s. 552, part V.

ROBBERY.

(*See* LARCENY.)

SAVINGS BANKS.

The R. S. C. c. 121, is the Act respecting Government Savings Banks. Under section 19, altering the books or embezzling funds

is felony. Under section 20, it is a misdemeanour to falsely pretend to be the owner of a deposit in such bank.

The R. S. C. c. 122, ss. 32 and 33, contain similar provisions in reference to chartered savings banks not belonging to the Government.

SCOTT ACT.

The Parliament of Canada had power under "The British North America Act" to pass "The Canada Temperance Act." Russell v. R., 7 App. Cas. 829.

As to wholesale licenses being within the competence of the local legislature in Nova Scotia, see R. v. McDougall, 22 N. S. R. 462; R. v. McKenzie, 23 N. S. R. 6; R. v. Rowan, 23 N. S. R. 421.

As to bringing "The Canada Temperance Act" into force, see R. v. Freeman, 22 N. S. R. 506; R. v. Casson, 21 N. S. R. 413.

As to the requisites of the Order in Council, see *ex parte* Doherty, 27 S. C. N. B. 405; see also 51 V. c. 34.

The introductory part of the annual statutes of Canada, containing a statement that an Order in Council had been made bringing "The Canada Temperance Act" into force in a county, is not evidence of the making of such order. *Ex parte* Mercer, 25 S. C. N. B. 517.

A city, though within the territorial limits of a county, is not to be treated as a part of the county, on a petition to bring the Act into force, and the Act may be brought into force in the city on petition and vote of the electors thereof alone, though it is not a separate electoral district. *Ex parte* Dalton, 27 S. C. N. B. 426; see 51 V. c. 34, s. 4, as to provisional or temporary judicial districts

Under section 894 of the Criminal Code the courts are bound to take judicial notice of a proclamation bringing the Act into force *Ex parte* Phillips, 26 S. C. N. B. 397; see the 56 V. c. 31, s. 8.

The R. S. C. do not operate as new laws but as a substitution and consolidation of the Acts thereby repealed, therefore those statutes do not affect the operation of "The Canada Temperance Act" where it had been previously adopted. *Ex parte* Donaghue, 26 S. C. N. B. 361.

"The Canada Temperance Act" can have no operation where "The Indian Act" is in force. *Re* Metcalfe, 17 O. R. 357.

The Act has been amended by the 51 V. c. 34; the 51 V. c. 35, and the 55 and 56 V. c. 26. Section 1 of the latter Act allows the purchase or sale by legally qualified physicians, chemists, or druggists, of various articles, and of spirituous liquors or alcohol for exclusively medicinal purposes, or for *bona fide* use in some art, trade, or manufacture.

Before a person can be legally convicted of selling liquor under the Act, it must be proved before the magistrate that the second part of the Act is in force, by the production of the *Canada Gazette*, containing the proclamation. R. v. Risteen, 22 S. C. N. B. 51. The fact of the Act coming into force must be proved as any other fact necessary to give jurisdiction. R. v. Bennett, 1 O. R. 445; R. v. Walsh, 2 O. R. 206.

Section 95 of the Act, provides that after a poll has been held in any county, the Governor-General in Council may declare that the second part shall be in force, and take effect in such county "upon, from and after the day on which the annual or semi-annual licenses, for the sale of spirituous liquors, then in force in such county, will expire." In the county of Kings, Nova Scotia, the poll had been held, and the Governor in Council declared, by proclamation, that the second part of the Act should be in force and take effect "upon, from, and after the day on which the annual or semi-annual licenses, now in force in said county, will expire." There were then no licenses in the county, and there had been none for years previously. It was held that no day had been fixed, either by the statute or by proclamation, for bringing the second part of the Act into force. R. v. Lyons, 5 Russ. & Geld. 201.

The adoption of the Act is on the day of polling, though the scrutiny return and Order in Council may be some time after. R. v. Halpin, 12 O. R. 330.

The word "county," as used in the Act, means county for municipal and not for electoral purposes. R. v. Shavelear, 11 O. R. 727, see s. 99; see 51 V. c. 34, s. 4.

Defendant was, in the village of Parry Sound, convicted by the stipendiary magistrate of the district, for a sale in the township of Humphrey, of intoxicating liquors, contrary to the Act. The township of Humphrey was within the territorial limits of the county of Simcoe, and the Act being in force in the county, was held also to be in force in the district. The township of Humphrey formed also part of the district of Parry Sound, for certain judicial purposes, and the court held that the stipendiary magistrate for the said district had jurisdiction to try offences against the Act committed in the township of Humphrey. R. v. Monteith, 15 O. R. 290.

The case of R. v. Shavelear, *supra*, did not decide, when the territorial limits of a county for municipal purposes differ from its limits for judicial purposes, that the former should be the limits within the meaning of the Act.

The defendant was convicted by two justices of the peace of the district of Muskoka for a breach of the Act in selling liquor at the village of Bracebridge, in the said district. The Act was in force in Bracebridge only by reason of its being for municipal purposes within the county of Victoria. The Act was in force in Victoria, and as "county" means county for municipal purposes, (R. v. Shavelear, 11 O. R. 727,) it was, therefore, in force in Bracebridge. But it could only be dealt with by justices whose commissions ran into the county of Victoria, there being no evidence to shew that the Act was in force in the district of Muskoka, and the conviction by justices of the latter district was, therefore, held invalid. R. v. Higgins, 18 O. R. 148.

The 100th section of the Act prescribes the punishment for keeping or selling liquor contrary to the provisions of the Act.

This section provides no mode for enforcing the payment of the fine imposed, but the provisions of s. 872 of the Code are applicable to convictions under the 100th section of "The Canada Temperance Act," and, therefore, in default of goods, imprisonment, not exceeding three months, may be imposed. *Ex parte* Pourier, 23 S. C. N. B. 544.

In a conviction for a first offence under s. 100 of the Act, the form VV, given by s. 859 of the Code, awarding distress for non-

payment of the fine, and in default thereof, imprisonment, must be adopted, and not the form WW. Where, in such a case, the latter form is adopted, it is not amendable under the 117th and 118th sections of "The Canada Temperance Act." R. v. Sullivan, 24 S. C. N. B. 149.

A person buying liquor is not guilty of an offence under the Act, and cannot, in respect of a sale thereof made to him, be regarded in point of law as an aider, abettor, counsellor, or procurer within the meaning of s. 842 (2) of the Code, for buying liquor is not made an offence by the Act. R. v. Heath, 13 O. R. 471.

Where the keeper of an hotel or boarding house goes out and purchases liquor for her boarders, with money given her for that purpose, thus acting merely as a messenger, and without making any profit, she cannot be convicted of an offence under the Act. R. v. McDonald, 19 N. S. R. 336.

Under the 100th section the justice has a discretion to impose a penalty exceeding fifty dollars. R. v. Cameron, 15 O. R. 115.

The words "not less than $50" in this section of the Act, were construed to mean fifty dollars and neither more nor less, and a conviction was quashed because it imposed a penalty of $75 under the section, which the court held to be beyond the jurisdiction of the magistrate. R. v. Smith, 16 O. R. 454.

On a charge of selling liquor contrary to the Act, it is not necessary to allege that the offence was committed through the instrumentality of a clerk, servant, or agent, as the defendant is guilty under s. 100 of the Act and liable to the penalties imposed, if the offence is committed by himself or any one within the class of persons above mentioned. R. v. Alexander, 17 O. R. 458.

In *ex parte* McCleave, 28 S. C. N. B. 222, the point was raised but not decided, whether the principal and servant can be convicted for the same offence under the Act.

The 51 V. c. 34, s. 6, repeals s. 103 of the Act, and prescribes the persons before whom prosecutions may be instituted in the different provinces of the Dominion.

A justice of the peace for the county of Pictou, in Nova Scotia, who was also a stipendiary magistrate for a portion of the county,

namely, the town of New Glasgow, but who did not sit and act as such stipendiary magistrate in the particular case, was held eligible as one of the two justices of the peace required under this section, but if he had sat as stipendiary magistrate, then, under s. 104, as amended by the 51 V. c. 34, s. 7, he should sit alone. R. v. Graham, 6 Russ. & Geld. 455.

The defendant was convicted at the town of Perth, in Ontario, by the police magistrate for the south riding of the county of Lanark, for selling in the said town of Perth intoxicating liquor contrary to the Act. The authority of the police magistrate was derived from a commission appointing him for the south riding of Lanark, as constituted for purposes of representation in the Legislative Assembly of Ontario. The town of Perth was situated wholly in the said south riding. It was held that the magistrate was not a police magistrate for the town of Perth, which could not be held to be a town having a police magistrate within the meaning of this section, by virtue of such appointment, and that the conviction should have been before the mayor or two justices of the peace, and was therefore void. R. v. Young, 13 O. R. 198.

The town of Paris is an incorporated town, wholly within the county of Brant. The defendant was convicted before a police magistrate, whose commission was for the county of Brant, for unlawfully selling intoxicating liquor in the town of Paris; it was held that the magistrate's appointment did not authorize him to act for the town of Paris, and that the conviction should have been before the mayor or two justices of the peace. R. v. Bradford, 13 O. R. 735; see also R. v. Clark, 15 O. R. 49; R. v. Riley, 12 P. R. (Ont.) 98.

Having regard to the provisions of s. 103 (*b*) of the Act as interpreted by s. 2, an union of counties united for municipal purposes cannot be said to have a police magistrate by reason of one of the counties so united having one, and a conviction by a person commissioned as a police magistrate for the county of Dundas for an offence against the Act, committed in that county, being one of the united counties of Stormont, Dundas and Glengarry, was quashed for want of jurisdiction. R. v. Abbott, 15 O. R. 640.

Section 104 of the Act, as amended by the 51 V. c. 34, s. 7, provides that if the prosecution is brought before a police magistrate, etc., no other justice shall sit or take part therein.

Section 105, as amended by the 51 V. c. 34, s. 8, provides that if the prosecution is before two other justices of the peace, all acts and proceedings prior to the hearing and trial may be done and taken by one of them, and no justices, other than such two justices, shall sit or take part therein, except in the case of their absence, or the absence of one of them, and not in the former case except with the assent of the prosecutor, nor in the latter except with the assent of such justice who is present.

Section 842 (3) of the Code does not apply to prosecutions under the 105th section of "The Canada Temperance Act," and where a prosecution is brought before two justices under the latter section, the information must be laid before both justices. *Ex parte* Manzer, 23 S. C. N. B. 315.

A prosecution under the Act was commenced by two justices, A. and B., and a summons issued. At the return of the summons, another justice of the county, on application of the defendant, issued a summons for A. and B. to give evidence for the defendant on the hearing, whereupon two other justices at the request of A. and B. under the provisions of s. 105 of the Act, heard the case and convicted the defendant. The court held that the word "absence" in s. 105 did not necessarily mean actual absence from the trial, but would apply to a case where the original justices had for some cause become incapable of acting on the hearing. Bryne v. Arnold, 24 S. C. N. B. 161. Affirmed on appeal to the Supreme Court. Cassels Dig. (1893), pp. 107-108.

Prior to the amendment of s. 105 by the 51 V. c. 34, s. 8, it was imperative that an information thereunder be laid before two justices, and that they both be named in the summons; where, therefore, a summons stated that an information had been laid only before the justice who signed it, and yet called upon the defendant to appear before another justice named, as well, it was held that the justices had no jurisdiction, and that the defendants appearing did not confer it. R. v. Ramsay, 11 O. R. 210; followed in R. v. Johnson, 13 O. R. 1.

But where the information is laid before the two justices who try the case, and the defendant appears and pleads, he thereby submits to the jurisdiction, and the justices having jurisdiction over the subject of investigation, the rule laid down in R. v. Ramsay, 11 O. R. 210 does not apply. See R. v. Walker, 13 O. R. 83.

And where in a prosecution, under the Act, the information on its face purported to be laid before D. and A., two justices of the peace, and both signed the summons which required the defendant to appear before two justices of the peace, not however naming D. and A., this was held no objection, as the complaint was heard and adjudicated upon by D. and A. R. v. Sproule, 14 O. R. 375.

A summons under the Act, recited the information which was taken by two justices to have been "laid before the undersigned," who was one of the justices only, and required the defendant to appear before him or before the justice, who should be at the time and place named to hear the complaint, it was held that the name of the justice who was not a party to the summons need not be stated in it. R. v. Durnion, 14 O. R. 672.

The summons for an offence under the Act stated that the defendant was charged with the offence before one justice. The information was laid before two justices, one of whom issued the summons. The defendant appeared on the summons when two justices were present, and cross-examined the witnesses for the Crown, and called witnesses on his own behalf; and it was held that the fact of so issuing the summons was a mere irregularity, which was waived by appearing on the summons. It was held also that the justices, before whom the case was to be tried, need not be named in the summons. R. v. Collins, 14 O. R. 613.

An information for an offence under this Act may be either in the form C, given by "The summary Convictions Act," or in form R, given by the 51 V. c. 34; the new forms being given for convenience, specially adapted to the Act and to prevent mistakes by the magistrates. *Ex parte* Kelly, 29 S. C. N. B. 130.

The 107th section of the Act as amended by the 51 V. c. 34, s. 9, provides that where there is no other provision, every offence against the second part of the Act may be prosecuted, and the

penalties and punishments therefore enforced in the manner directed by the "Act respecting Summary Proceedings before Justices of the Peace." See Code, s. 839.

Under the Act, in the case of a second offence, there is no mode of raising or levying the penalty, and this 107th section, combined with ss. 53 & 62 of the R. S. C. c. 178; ss. 859 & 872 of the Code, give power to award distress, and, in default of sufficient distress imprisonment. R. v. Doyle, 12 O. R. 347.

The 108th section of the Act, as amended by the 51 V. c. 34, s. 10, gives power to issue a warrant to search for liquor, in respect of which an offence has been committed, where there is reasonable cause to suspect that such liquor is in any dwelling house or other place.

The search warrant, under this section, is a proceeding in aid, and not an original proceeding, under the Act. A prosecution under the Act must be actually pending, when, and in the course of which, the warrant issues to make the search, and the search warrant cannot be legally issued to found a charge to be made, in case liquor is found on the premises; but if the search warrant is illegally issued, evidence obtained under it may be used against the defendant. R. v. Doyle, 12 O. R. 347.

But before the search warrant can be legally issued, the party accused must be summoned to answer the charge, and the proceedings must be *bona fide*, and not instituted merely for the purpose of complying with the provision in the statute as to the issue of a search warrant. Where such a prosecution is pending, the justice has jurisdiction to issue a search warrant for the sole purpose, on conviction of the offender, of forfeiting the liquor by means of which he committed the offence. R. v. Walker, 13 O. R. 83.

Under this section of the Act, it has been held that the information and warrant to search must show the facts giving the justice jurisdiction. Gallihew v. Peterson, 20 N. S. R. 222.

The information on which the search warrant is issued must state the cause for suspicion therein sworn to, and the particulars of the offence, whatever they may be. R. v. Walker, 13 O. R. 83. The search warrant must be signed by two justices of the peace, or

an official having the power of two justices, though the information may be laid before one of two justices, before whom a prosecution under the Act is brought. See 51 V. c. 34, ss. 6 & 10.

The fact that the search warrant was executed by the informer, who was also chief constable, was held not to be a ground for quashing a conviction. R. v. Heffernan, 13 O. R. 616.

The 109th section of the Act, as amended by the 51 V. c. 34, s. 11, enables the magistrate convicting, to order that liquors seized on a search warrant be destroyed.

Pending a prosecution against defendant for selling intoxicating liquor contrary to the provisions of the Act, an information was laid by the prosecutor to obtain a search warrant, and upon search, a barrel of beer connected with a beer pump, and all the usual appliances for the sale of liquor, were found on defendant's premises. An amendment of the charge was afterwards made, altering it into an information for unlawfully keeping for sale; a new information was sworn to, and defendant was convicted of the latter offence. The court admitted that the only liquor which may be destroyed, under s. 109, is such as is brought before it on the search warrant, and that before the search warrant can issue, some offence against the Act must be shown to have been committed; yet, nevertheless, it was ruled that when the amendment was made, the effect was to make the pending prosecution one for keeping instead of selling liquor, and there being sufficient evidence to prove the keeping for sale, the destruction of the liquor was authorized. R. v. Heffernan, 13 O. R. 616.

The 110th section of the Act relates to the manner of describing offences in the proceedings taken to punish for keeping or selling.

Where the information was for selling liquor, and the conviction was for "selling intoxicating liquor, and having hotel appliances in the bar-room and premises," the court held that even if a double offence had been charged in the information, the magistrate had power to drop one and proceed on the other, but that in this case, a second offence, under s. 118 of the Act, was not embraced in the words used. R. v. Klemp, 10 O. R. 143.

Under the Act, when the information charges that the defendant did unlawfully *dispose* of intoxicating liquor, and the conviction adjudges that he did unlawfully *sell* intoxicating liquor, the variance will not be material, for under the special provisions of the Act, as contained in ss. 110, 112, 113 and 121, these are convertible terms. In any event, the information could be amended under ss. 116, 117 and 118 of the Act. R. v. Hodgins, 12 O. R. 367.

The 111th section provides that when the appliances of a bar are found, and intoxicating liquor is also found, in any place, the liquor shall be deemed to be kept for sale, unless the contrary is proved.

Although under this section, the presumption that liquor is kept for sale may only arise when the appliances of a bar, and intoxicating liquor is also found, yet, in a prosecution under the Act, in a municipality where there is no prohibitory by-law, the fact of a bar and intoxicating liquors being found in the place, with the usual appliances for the sale of such liquors, is some evidence independently of that section of the Act from, and upon which, the magistrate could act in forming his opinion of the truth of the charge. Where there is no such evidence, the court will not review the magistrate's finding on such a question of fact. R. v. Brady, 12 O. R. 358.

An information, charging defendant with having sold intoxicating liquor, was laid before two justices of the peace, and immediately afterwards a further information to obtain a search warrant was sworn to by the same complainant before the same two justices. Thereupon a warrant to search the premises of defendant was issued, and upon the search being made, three bottles were found, each containing intoxicating liquor, and it was shown that there were also found in the defendant's house other bottles, some decanters and glasses, and a bar or counter. On the day following the search, the complainant laid a new information before the same two justices of the peace, charging the defendant with keeping intoxicating liquor for sale. Upon the hearing, the constables who executed the search warrant were the only witnesses examined, and on their evidence the defendant was convicted. It was held that the presumption of keeping liquor for sale, created by

s. 111 of the Act, arises only where the appliances for the sale of liquor, mentioned in the section, together with the liquor, are found in municipalities in which a prohibitory by-law, passed under the provisions of the Act, is in force. As it appeared in this case that the search warrant had been issued, and the defendant's premises searched, for the mere purpose of possibly securing evidence on which to bring a prosecution, the justices of the peace and the informant were ordered to pay the defendant's costs. R. v. Walker, 13 O. R. 83.

Under s. 114, on the trial of any proceeding under the Act, the person opposing or defending, or the wife or husband of such person, shall be competent and compellable to give evidence.

Under this section it was held in R. v. Halpin, 12 O. R. 330, that the accused was not bound to criminate himself; but this decision was overruled in a later case, and the accused is now compellable to give evidence even to the extent of criminating himself. R. v. Fee, 13 O. R. 590; see 56 V. c. 31, s. 5, *ante*, pp. 408-409.

The 115th section of the Act defines the procedure, upon any information, for committing an offence against any of the provisions of the Act, in case of a previous conviction or convictions being charged.

There is no power to punish as for a third offence, unless there have been two prior convictions for offences of the same nature, and where neither the record of conviction nor the evidence shows this, the conviction must be quashed. R. v. Clark, 15 O. R. 49.

The magistrate has power to convict the accused of prior offences in his absence. *Ib.*

A conviction for a second offence, under the Act, will be invalid if it does not appear by the information on which it is founded what the nature of the previous offence is, or where it was committed, or that it was of a similar nature to the fresh offence charged by the information.

Section 115 (*b*) of the Act, does not dispense with strict proof by production of the original record, or otherwise, of previous convictions where it is sought to impose the increased penalty,

under section 100, and the certificate mentioned in the section can only be admitted as proof of the number of such previous convictions. R. v. Kennedy, 10 O. R. 396.

It is doubtful whether such certificate is sufficient *prima facie* evidence of identity of the accused with the person of the same name, so previously convicted. R. v. Edgar, 15 O. R. 142.

The language of this section is peremptory, and therefore to give a magistrate jurisdiction thereunder, to enquire as to a previous conviction, he must first find the accused guilty of the alleged subsequent offence. *Ib.*

Under the section 115 (*b*) the previous convictions may be proved by the production thereof where the identity of the defendant with the person previously convicted is proved. The certificate referred to in this section is a certificate showing whether the conviction therein referred to is a first, second or third, and if such certificate contains a sufficient statement of the fact of conviction, and the identity is established, such evidence ought to be sufficient. R. v. Kennedy, 17 O. R. 159; R. v. Kennedy, 10 O. R. 396-402, not followed.

In *Ex parte* Phillips, 26 S. C. N. B. 397, the majority of the court held that the previous conviction may be proved by a certificate of the magistrate who tries the subsequent offence, he trying both cases.

Where the evidence shows two offences at different times on the same day, two convictions for the same are valid under section 115 (*d*), though neither the informations nor the convictions state that the offences were several. *Ex parte* Perkins, 30 S. C. N. B. 15.

A conviction for selling liquor contrary to the Act, stating the commission of the offence within three months previous to the information, is valid, though the defendant was previously convicted of a similar offence within the same period, it appearing that the two offences were distinct.

A person may be convicted of several offences under the Act, committed within the period of three months. *Ex parte* Hopper, 27 S. C. N. B. 496.

The conviction for a first or second offence under the Act, should be a complete judgment, and the court should thereby award distress in default of payment of the penalty, and for want of sufficient distress, imprisonment of the defendant. R. v. White, 28 S. C. N. B. 216, disapproving of R. v. Porter, 20 N. S. R. 352.

The defendant cannot be convicted in his absence of a third offence under the Act. R. v. Salter, 20 N. S. R. 206; R. v. Porter, 20 N. S. R. 352.

But a majority of the Supreme Court of New Brunswick held that a defendant may be convicted of a second offence, under this section, though he is not present at the trial to be asked as to a previous conviction. *Ex parte* Groves, 24 S. C. N. B. 57.

I., was convicted on the 16th May, for selling liquor between the 21st January and the 18th April preceding, contrary to the Act. He was subsequently convicted for unlawfully keeping liquor for sale, between the 14th February and the 24th March, in the same year. It was held that, if a man were convicted for selling liquor on a particular day, he could not afterwards be convicted, on the same evidence, for keeping it for sale on that day, though the offences of keeping and selling are distinct, for the selling would be evidence of keeping for sale; but in this case it was held that the onus was on I. to prove that the two charges were identical; that the keeping for sale with which he was charged was in fact the selling, of which he had been convicted, and that the mere fact that the days between which he was charged with keeping liquor for sale, were included within the times stated in the conviction for selling, did not sustain the defence of a former conviction. R. v. Marsh, 25 S. C. N. B. 371.

The 116th section of the Act provides for the amendment of variances and defects.

Where the original information was amended by changing the date of the offence from the 10th to the 23rd of February, and the parties thereupon agreed that the evidence taken should stand for the purposes of the amended charge, instead of having a repetition of it, the court held that this course was unobjectionable. R. v. Hall, 12 P. R. (Ont.) 142.

The 117th section of the Act provides that no conviction or warrant or other process or proceeding, shall be held insufficient or invalid by reason of any variance between the information and conviction, or by reason of any other defect in form or substance, if it can be understood that the same was made for an offence against some provision of the Act within the jurisdiction of the justice, and if there is evidence to prove such offence, and if no greater penalty is imposed than is authorized by the Act. Under s. 118, applications to quash convictions are to be disposed of on the merits, and the power of amendment is given.

An information was laid before K., who described himself as "one of Her Majesty's police magistrates in and for the county of Oxford," and he was similarly described in the summons and conviction. K.'s commission was issued on the 12th of January, 1887, and appointed him police magistrate in and for the county of Oxford. It was urged that Woodstock and Ingersoll were two towns in the county, and that each had at the time of information laid, a population of more than 5,000 inhabitants, so as to have by law, each a police magistrate, which it must be presumed was the case here, and therefore K. could not be police magistrate for the county which included these towns, as there could not be more than one police magistrate for the same county. A motion to quash the conviction was refused, the court holding that there was no judicial knowledge of the fact of such towns containing such population, and no knowledge of it by affidavit or otherwise, and that even if there was more than one police magistrate, the other might have been appointed subsequently to K., and that the appointment of such other, and not K., would be void. R. v. Atkinson, 15 O. R. 110.

A conviction for selling intoxicating liquor contrary to the provisions of the Act, contained no reference to the Act, did not show where the offence was committed, and merely adjudged that the defendant pay $100 for selling intoxicating liquors. The court held the conviction bad, and that the information and warrant could not be looked at to see that an offence had been committed. Woodlock v. Dickie, 6 Russ. & Geld. 86.

Under ss. 117 and 118 of the Act, the court has no power to amend the conviction when the penalty imposed is greater than the Act authorizes, and such conviction is invalid. R. v. Rose, 22 S. C. N. B. 309.

An objection that the conviction did not shew on its face the absence of either of the justices before whom the information was laid, nor the assent of the other, that another justice should act or take part in the prosecution is one of form merely and cured by this section. R. v. Collins, 14 O. R. 613.

The information specifically charged that the defendant had been previously convicted under "The Canada Temperance Act," the conviction followed the information in this respect, and the affidavit filed by the defendant did not deny the fact, but only the evidence of it. The court held that the question of a previous conviction was within the jurisdiction of the magistrate and his finding as to it was conclusive. R. v. Brown, 16 O. R. 41.

The refusal by a justice to allow the defendant to give evidence on the trial of an information under the Act is a matter going to the justice's jurisdiction, and, therefore, a *certiorari* will lie to remove the conviction. *Ex parte*, Legere, 27 S. C. N. B. 292.

A conviction under the Act charged the defendant with having "unlawfully kept for sale and sold intoxicating liquor," and imposed a penalty of $50. A sale of liquor was proved. On application for a rule *nisi* to quash the conviction, the court held that as the penalty was that authorized and the offence of selling was proved, the conviction ought to be amended under ss. 117 and 118 of the Act by striking out the words "kept for sale and." R. v. Dewar, 30 S. C. N. B. 248.

Where a conviction, under the Act, stated that the defendant had sold "spirituous or other intoxicating liquors," and the proof was a sale of brandy, the conviction was amended under s. 118, by striking out the words "spirituous or other," which brought the offence within s. 110 of the Act, which makes it sufficient to state the unlawful sale of intoxicating liquor, without stating the name or kind of such liquor. R. v. Blair, 24 S. C. N. B. 71.

The 119th section of the Act relates to the removal of the conviction by *certiorari*.

It is not necessary that there should be an absence of jurisdiction over the subject matter of the charge. It is sufficient to authorize the issue of the *certiorari*, if, on the evidence produced, there is a total absence of proof of the offence charged. Thus, where there was no evidence to shew that the beverage partaken of was spirituous or intoxicating, a *certiorari* was granted, and the conviction quashed. R. v. Beard, 13 O. R. 608; and where there is no evidence to warrant a conviction, a *certiorari* may issue. R. v. Kennedy, 10 O. R. 396.

But a *certiorari* cannot issue merely for the purpose of examining and weighing the evidence taken before the magistrate. This section of the Act takes away the right to it except where the magistrate is proceeding without jurisdiction. R. v. Sanderson, 12 O. R. 178; R. v. Wallace, 4 O. R. 127. But there must be shewn to have been an offence, for if the conviction is nominally under the Act, but for a supposed offence, which does not appear to be an offence against the provisions of the second part of this Act, the above section would not apply. R. v. Elliott, 12 O. R. 524; see R. v. Ryan, 10 O. R. 254. If no evidence is given of the Act being in force, the proceedings will be quite as defective as if the Act were not in force.

The operation of this section, in taking away the right to a *certiorari*, is confined to the case of convictions made by the special officials named in the section. R. v. Walker, 13 O. R. 83.

In cases where a magistrate has jurisdiction, *certiorari* is absolutely taken away, but an appeal to the sessions still exists. Section 119 of the Act takes away this appeal where the conviction is before a stipendiary magistrate. R. v. Ramsay, 11 O. R. 210.

In *ex parte*, Daly 27 S. C. N. B. 129, the court held that *certiorari* was taken away though there was no evidence. See also *ex parte* McDonald, 27 S. C. N. B. 169.

A defendant who removes a conviction by *certiorari* under the Act is liable for costs on failure, and entitled to recover costs in the event of his succeeding in quashing the conviction. R. v. Freeman, 21 N. S. R. 483.

Costs cannot be included in a conviction under the Act. R. v. Oakes, 21 N. S. R. 481 ; R. v. Ward, 20 N. S. R. 103.

Since the passing of the 51 V. c. 34, s. 14, providing a form of conviction for offences under the Act the majority of the court in Nova Scotia held that the latter forms must be followed and a conviction which omits the provision in respect to the issuing of a warrant of distress and the imposition of imprisonment in default of distress according to the form in this Act is bad. R. v. McFarlane, 24 N. S. R. 54.

The cases of R. v. Porter, 20 N. S. R. 352 and R. v. Orr, *Ib.* 425, are not applicable since the passing of the above statute.

In a proceeding, under s. 121 of the Act, for tampering with a witness, it is enough to prove that an information has been laid and a summons issued for violation of the Act, and that the party tampered with was summoned as a witness on the hearing of the information. It is not necessary to prove a conviction for the offence charged. A conviction for tampering with a witness, under this section, charged the defendant with offering the witness money, to induce him to leave the county, and also with attempting by threats to induce him to absent himself. Though this was a charge of two offences, it was held to be cured by s. 907 of the Code. *Ex parte* White, 30 S. C. N. B. 12.

SEAMEN.

Sections 392 and 393 of the Code, contain various provisions for the protection of seamen.

Special provisions are made by the R. S. C. c. 71, in respect of the discipline on board of Canadian Government vessels.

"The Seamen's Act," R. S. C. c. 74, amended by 53 V. c. 16, contains a large number of provisions governing the conduct of seamen and masters of ships, and of all others coming in contact with them. Various offences are made misdemeanours, and for others a penalty is inflicted. Any wilful breach or neglect of duty or drunkenness, or the doing of any act tending to the immediate loss, destruction, or serious damage of the ship, or of any person belonging to, or on board thereof, is a misdemeanour. *Ib.* s. 90.

Stowaways are liable to a penalty not exceeding eighty dollars. *Ib.* s. 105.

Any police or stipendiary magistrate, or any two justices of the peace, may try and determine, in a summary way, all offences punishable under the Act, *Ib.* s. 114, and the provisions of "The Summary Convictions Act" are to apply to all such proceedings. *Ib.* s. 115. Under s. 123 of this Act, on application on behalf of either party, the court may receive and may cause to be reduced to writing, the evidence of such witnesses for the defence or the prosecution, as are then present or can be produced, and may thereupon discharge such witnesses from further attendance, and may continue the case on some future day, and witnesses about to leave the Province may be examined *de bene esse*.

In reference to seamen in inland waters the R. S. C. c. 75, contains provisions substantially the same; see 56 V. c. 24.

SEARCH WARRANT.

(*See Ante*, pp. 73-74.)

SEDUCTION.

As to the seduction of girls under sixteen, see Code, s. 181. As to seduction under promise of marriage, see Code, s. 182. As to the seduction of a ward or servant, see Code, s. 183; and as to the seduction of females who are passengers on vessels, see Code, s. 184. Offences against the foregoing ss. 181, 182 and 183, must be prosecuted within one year; see Code, s. 551 (*c*) (v) (vi) (vii). And there can be no conviction on the evidence of one witness, unless such witness is corroborated in some material particular by evidence implicating the accused. Code, s. 684 (*c*).

SESSIONS.

As to the jurisdiction of the court of general or quarter sessions of the peace, see ss. 539 and 540 of the Code. The court has power to try any indictable offence, except those mentioned in s. 540. Consequently it may now try forgery and perjury, though formerly it was otherwise. See R. v. McDonald, 31 Q. B. (Ont.) 337-9; R. v. Currie, 31 Q. B. (Ont.) 582; R. v. Dunlop, 15 Q. B.

(Ont.) 118. So it may try the offence of kidnapping. Cornwall v. R., 33 Q. B. (Ont.) 106.

A bench warrant issued at the quarter sessions, tested in open sessions, and signed by the clerk of the peace, was held not invalid for want of a seal. Fraser v. Dickson, 5 Q. B. (Ont.) 231. And a warrant of commitment under the seal of the court or signature of the chairman is not necessary. Ovens v. Taylor, 19 C. P. (Ont.) 49.

Where a statute enables two justices to do an act, the justices sitting in quarter sessions may do the same act, for they are not the less justices of the peace because they are sitting in court in that capacity. Fraser v. Dickson, 5 Q. B. (Ont.) 233.

It would seem, however, that the chairman of the sessions cannot make any order of the court, except during the sessions, either regular or adjourned. *Re* Coleman, 23 Q. B. (Ont.) 615.

The sessions possess the same powers as the Superior Courts as to altering their judgments during the same sessions or term, and for that purpose the sessions is all looked upon as one day. R. v. Fitzgerald, 20 Q. B. (Ont.) 546; see also McLean & McLean, 9 U. C. L. J. 217.

SHEEP.

In Ontario the R. S. c. 214, imposes a tax on dogs and protects sheep, see 56 V. c. 46.

The owner of a sheep killed or injured by a dog can under section 15 of this Act recover the damage occasioned thereby without proving that the dog had a propensity to kill or injure sheep. The Act applies to a case where the dog has been set upon the sheep by the owner's son. R. v. Perrin, 16 O. R. 446.

SHIPWRECKED PERSONS.

As to preventing such from saving their lives, see s. 254 of the Code. As to the meaning of the expression "shipwrecked person," see s. 3 (*x*).

SHOOTING.

By s. 232 of the Code shooting at any person with intent to murder, is an indictable offence. So by s. 241, it is an indictable

offence to shoot at any person with intent to maim, disfigure or disable, or to do some other grievous bodily harm. Attempting to discharge any kind of loaded arms is also an offence of a similar character. But a loaded arm is one that is ready for discharge, and there must be proof that it is so loaded. R. v. Gamble, 10 Cox, 545.

SLANDER.

Slander is not cognizable before magistrates, except the words used directly tend to a breach of the peace, as if one man challenge another; in such case, a party may be bound to good behaviour, and even indicted. R. v. Langley, 2 Salk. 697-8; see Libel, *ante*, p. 481.

SMUGGLING.

Smuggling is the importing or exporting either (*a*) goods without paying the legal duties thereon, or (*b*) prohibited goods. The existing law on the subject is contained in the R. S. C. c. 32, s. 192. See R. v. Bathgate, 13 L. C. J. 299.

SODOMY OR UNNATURAL OFFENCES.

Sections 174 and 175 of the Code now govern these offences.

The proof is the same as in rape, with two exceptions. It is not necessary to prove the offence to have been committed without the consent of the person upon whom it was perpetrated. Both parties, if consenting, are equally guilty, but if one of the parties is a boy under the age of fourteen years, it is felony in the other only. By s. 260 of the Code, to attempt to commit the said crime, or to make an assault with intent to commit the same, or to make any indecent assault upon a male person, is an indictable offence. Sending a letter proposing the crime, is an attempt to incite. R. v. Rainsford, 31 L. T. N. S. 488.

STEAMBOAT INSPECTION.

The R. S. C. c. 78, contains various regulations in regard to the equipment and management of steamboats. Section 52 makes it a misdemeanour for the master of any steamboat, wilfully or negligently, at any time, to carry a greater number of passengers

than permitted by his certificate. All proceedings are to be under "The Summary Convictions Act." *Ib.* s. 61. The Act was amended by the 53 V. c. 17, the 54 & 55 V. c. 39, and the 55 & 56 V. c. 19.

SUICIDE.

Under s. 238 of the Code, every one who attempts to commit suicide is guilty of an indictable offence and liable to two years' imprisonment.

And under s. 237, every one is guilty of an indictable offence and liable to imprisonment for life who counsels or procures any person to commit suicide, actually committed in consequence of such counselling or procurement, or who aids or abets any person in the commission of suicide.

The attempt to commit suicide by a person of sane mind is a misdemeanour at common law, being an attempt to commit a felony. It is not an attempt to commit murder, suicide having been held not to be murder. R. v. Burgess, L. & C. 254.

If two persons enter into an agreement to commit suicide together, and the means employed to produce death prove fatal to one only, the survivor is guilty of murder, as each is principal. R. v. Jessop, 16 Cox, 204.

SUNDAY.

The words, "or other person whatsoever," in the R. S. O. c. 203, are meant to include all persons *ejusdem generis*, with those previously mentioned, but not others, Sandiman v. Breach, 7 B. & C. 96; and they cannot be taken to include all persons doing anything whatsoever on a Sunday, but must be taken to apply to persons following some particular calling, of the same description as those mentioned. Hespeler v. Shaw, 16 Q. B. (Ont.) 104; R. v. Hynes, 13 Q. B. (Ont.) 194.

A farmer is not within the statute. R. v. Clewarth, 9 L. T. N. S. 682; R. v. Silvester, 33 L. J. Q. B. 96.

This statute does not apply to persons in the public service of Her Majesty, and therefore a conviction of a Government lock tender, on the Welland Canal, for locking a vessel through the

canal on Sunday in obedience to the orders of his superior was quashed. R. v. Berriman, 4 O. R. 282.

The work prohibited is not confined to manual labour and hence includes the sale of a horse. Fennell v. Ridler, 5 B. & C. 406. But the work must be in the ordinary calling of the party, Smith v. Sparrow, 4 Bing. 84; nor does it include all callings, as for example an attorney's work. Peate v. Dickens, 1 C. M. & R. 422. This statute does not prohibit contracts being made on a Sunday, such as a bill of exchange. Begbie v. Levi, 1 Car. & J. 180; or the hiring of a servant. R. v. Whitnash, 7 B. & C. 596.

Baking provisions for customers is a work of necessity, R. v. Cox, 2 Burr. 787; but baking rolls in the way of business is prohibited. Cripps v. Durden, Cowp. 640.

A person is liable, under the Act, for plying with his steamboat on Sunday between the City of Toronto and the Island, persons carried between these places not being "travellers," within the meaning of the exception in the first section. R. v. Tinning, 11 Q.B. (Ont.) 636.

The defendants, owner and captain respectively of a steamboat, advertised that they would carry excursionists on Sundays. A number of passengers left Buffalo, in the State of New York, on a Sunday morning, and proceeded by rail to Niagara, whence they were carried by the defendant's steamboat to Toronto and back the same day. It was held that these passengers were "travellers" within the meaning of the exception in the first section, and that there was no distinction in such case between travellers for pleasure and for business. R. v. Daggett, 1 O. R. 537.

SURETIES FOR THE PEACE.

See ss. 958 to 960 of the Code as amended by the 56 V. c. 32.

This is simply a recognizance entered into by a party with one or more sureties, before a justice of the peace out of sessions, or before the quarter sessions, conditioned for his keeping the peace, or being of good behaviour for a certain time.

The party's own recognizance may be taken if it is deemed sufficient, but the expression "sureties" means sufficient sureties,

R. S. C. c. 1, s. 7 (30), and therefore whether there are one or more sureties they must be sufficient.

Every court of criminal jurisdiction and every magistrate under Part LV., before whom any person shall be convicted of an offence and shall not be sentenced to death, shall have power in addition to any sentence imposed upon such person, to require him forthwith to enter into his own recognizances, or to give security to keep the peace, and be of good behaviour for any term not exceeding two years, and that such person in default shall be imprisoned for not more than one year after the expiry of his imprisonment under his sentence, or until such recognizances are sooner entered into or such security sooner given, and any person convicted of an indictable offence punishable with imprisonment for five years or less may be fined in addition to or in lieu of any punishment otherwise authorized. R. S. C. c. 181, s. 31; Code, s. 958.

But the authority to require sureties in general is given to justices by their commission. Therefore, if a justice of the peace be satisfied upon oath that a party has reasonable ground to fear, either from the direct threats of another or from his acts or words, that such other person will inflict or cause to be inflicted upon him some personal injury, or that such person will burn his house, or cause it to be burnt, the justice is bound to cause this security to be given; and the same if the threats be used against the wife or child of the party. But this does not extend to a man's servants, for they may themselves apply for sureties of the peace against persons from whom they fear personal injury; nor does it extend to threats as to a man's goods, for it is not a case within the authority thus given. Nor does it authorize the justice when the applicant acts from mere malice or vexation. Butt v. Conant, 1 B. & B. 548.

The complaint by the party threatened for sureties for the peace states that "he doth not make this complaint against, nor require such sureties from the said A. B., from any malice or ill-will, but merely for the preservation of his person from injury." On application being made for sureties of the peace by complaint to the justice on oath, the justice has to consider whether the facts stated show a reasonable ground for the party's fear of personal injury;

and if there be any ambiguity in the threats, it is for the justice to give them such a construction as he thinks right, and his decision in that respect will be final, (R. v. Tregarthen, 5 B. & Ad. 678) if the oath on which the complaint was founded be sufficient to warrant it. *Re* Dunn, 12 A. & E. 599. The justice cannot on such an application convict the party complained against of an assault. R. v. Davey, 20 L. J. M. C. 189. If he thinks that sureties ought to be given, and the party complained against be not present, he may issue his warrant to bring him before him. This warrant is executed in the same manner as any other warrant to apprehend a party. As soon as the party is apprehended and brought before the justice, the complaint is read over to him, and he is asked if he have any cause to show why he should not give the required sureties.

All that he is allowed to do in the way of showing cause is to show that the complaint is preferred from malice only (R. v. Parnell, 2 Burr. 806), or explain any parts of the complaint that may be ambiguous. R. v. Bringloe, 13 East, 174. In other respects he is not allowed to controvert the truth of the facts stated in the complaint, (R. v. Doherty, 13 East, 171) for in this case there is an exception to the universal principle, that a man may always be heard in his own defence. The reason of the exception is that binding over a person, against whom articles of the peace are exhibited, is not in the nature of a punishment, but is to prevent the apprehended danger of a breach of the peace being committed. Lort v. Hutton, 45 L. J. M. C. 95.

If the justice order the sureties to be given, and the defendant either refuse to give them or cannot do so, the justice should commit him. See form of commitment in default of sureties in the schedule to the Act, *ante*, p. 299. The warrant of commitment must specify a time certain during which the party is to be imprisoned, otherwise it will be bad. Prickett v. Gratex, 8 Q. B. 1020.

The justice may bind the party over for a limited time or until the next Quarter Sessions. Where a justice of the peace bound a party over to keep the peace for two years, the court held that he did not exceed his authority. Willis v. Bridger, 2 B. & A. 278.

The amount of the security required is entirely in the discretion of the justice. R. v. Holloway, 2 Dowl. 525.

A final commitment for want of sureties to keep the peace must be in writing. Lynden v. King, 6 O. S. 566. Such commitment should show the date on which the words were alleged to have been spoken, and contain a statement to the effect that complainant is apprehensive of bodily injury. *Re* Ross, 3 P. R. (Ont.) 301.

In a commitment for want of finding sureties for the peace, it is not necessary to state that the justice had information on oath which would justify him in binding the prisoner to keep the peace. Dawson v. Fraser, 7 Q. B. (Ont.) 391.

Justices should be careful not to require sureties of the peace without sufficient grounds; for if they do so from error of judgment, though they have a general jurisdiction over the subject matter, they render themselves liable to an action. Fullarton v. Switzer, 13 Q. B. (Ont.) 575.

Section 960 of the Code, provides for the release on certain terms of persons imprisoned for two weeks, in default of giving sureties to keep the peace.

TELEGRAPH COMPANIES.

Every one is guilty of an indictable offence and liable to two years' imprisonment who wilfully—

(*a*) destroys, removes or damages anything which forms part of, or is used or employed in or about any electric or magnetic telegraph, electric light, telephone or fire alarm, or in the working thereof, or for the transmission of electricity for other lawful purposes; or

(*b*) prevents or obstructs the sending, conveyance or delivery of any communication by any such telegraph, telephone or fire alarm, or the transmission of electricity for any such electric light or for any such purpose as aforesaid.

Every one who wilfully, by any overt act, attempts to commit any such offence, is guilty of an offence, and liable, on summary conviction, to a penalty not exceeding fifty dollars, or to three months' imprisonment with or without hard labour. R. S. C. c. 168, ss. 40 and 41. Code, s. 492.

By the R. S. C. c. 134, persons employed in connection with any telegraph line under the control of the government of Canada, or which, under any contract or agreement with any person or corporation, is partly under such control, are required to subscribe to a certain declaration before a justice of the peace or before a person appointed by the Governor in Council to take declarations under this Act, and any person who takes such declaration, and afterwards, either directly or indirectly, divulges to any person, except when lawfully authorized, any information which he acquires by virtue of his employment, or the contents of any telegram, is, on summary conviction before a justice of the peace, liable to a penalty not exceeding one hundred dollars nor less than fifty dollars, or to imprisonment for a term not exceeding six months, or to both penalty and imprisonment. See Leslie v. Hervey, 15 L. C. J. 9.

Every one is guilty of an indictable offence who, with intent to defraud, causes or procures any telegram to be sent or delivered as being sent by the authority of any person, knowing that it is not sent by such authority, with intent that such telegram should be acted on as being sent by that person's authority, and is liable, upon conviction thereof, to the same punishment as if he had forged a document to the same effect as that of the telegram. Code, s. 428.

Every one is guilty of an indictable offence and liable to two years' imprisonment who, with intent to injure or alarm any person, sends causes, or procures to be sent, any telegram or letter or other message containing matter which he knows to be false. Code, s. 429.

THREATS.

(*See* MENACES AND THREATS. *See* also VIOLENCE.)

TIMBER.

The R. S. C. c. 64, s. 1, provides that every person engaged in the business of getting out timber must select and register a mark, and put the same in a conspicuous place on each log or piece of timber under a penalty of fifty dollars. Any person using a mark of which another person is the registered owner, is liable, on sum-

mary conviction before two justices of the peace, to a penalty not exceeding one hundred dollars and not less than twenty dollars. *Ib.* s. 7. Under s. 338 of the Code, it is an indictable offence to appropriate timber found adrift or to deface any marks thereon. In prosecutions for these offences, a timber mark duly registered under the provisions of c. 64, shall be *prima facie* evidence that the same is the property of the registered owner of such timber mark. Code, s. 708.

TOLLS.

The R. S. C. c. 98, is the Act respecting tolls on Government works for the transmission of timber. All pecuniary penalties imposed by any regulation made by the Governor in Council under the Act, may be recovered by the collector of tolls and dues, if he sees fit, under the Summary Convictions Act. *Ib.* s. 7.

In Ontario the R. S. c. 159, relates to tolls.

Under this Act, the first engineer appointed to examine a road alleged to be out of repair, must act throughout the proceedings, unless another is appointed under s. 110. But under that section the judge is the person to be satisfied that the first engineer is unable to make or complete the examination, and his decision on that point cannot be reviewed. A second engineer appointed in January to examine and report "as to the present condition of the road," made an examination and certified, but was unable to report whether the repairs directed by the previous engineer had been performed, as it was covered by snow. In May following, without any further authority, he again examined and certified that it was in good repair, and the company began again to take tolls. It was held that he was *functus officio* after the first examination, and that the tolls were illegally imposed, and a conviction of the defendant for driving over the road without paying toll was therefore quashed. R. v. Greaves, 46 Q. B. (Ont.) 200.

TRADE MARKS.

"The Trade Mark and Design Act," R. S. C. c. 63, s. 17, makes it a misdemeanour for any person, except the registered owner of a trade mark, to use such mark on any article with intent to deceive

the public, and to induce any person to believe that such article was manufactured or produced by the proper owner. So any person who falsely represents any article as bearing a registered design, is liable on summary conviction to a penalty not exceeding thirty dollars and not less than four dollars. *Ib.* s. 32. See 54 and 55 V. c. 35.

Under "The Trade Marks Offences Act," R. S. C. c. 166, s. 4, forging or counterfeiting any trade mark is a misdemeanour. So under s. 5, fraudulently attaching a trade mark is a misdemeanour, and severe punishment is inflicted for a large number of offences specified in different sections of the Act. As to forgery of trade marks, see Code, s. 443.

TRADE UNIONS.

The R. S. C. c. 131, s. 17, provides that a general statement of the receipts, funds, effects, and expenditures of every trade union registered under the Act, shall be transmitted to the Registrar-General of Canada before the first of June in each year. A non-compliance with this section subjects the party to a penalty not exceeding twenty-five dollars for each offence, and wilfully making any false entry in or omission from any such general statement involves a penalty not exceeding two hundred dollars. Under s. 19 circulating false copies of rules of a trades union is a misdemeanour. All offences and penalties, under the Act, may be prosecuted and recovered under "The Summary Convictions Act." *Ib.* s. 20.

The proceedings must be before two justices of the peace or a police or stipendiary magistrate.

Any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified in the information, and if so specified and negatived, no proof in relation to the matters specified and negatived shall be required on the part of the informant or prosecutor. The master, or the father, son or brother of a master in the particular trade or business, in or in connection with which any offence under the Act is charged to have been committed, is disqualified from acting as a justice in any case under the Act, or as a member of any court for

hearing any appeal in any such case. *Ib.* s. 21. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise. *Ib.* s. 22.

TREASON.

Section 65 of the Code defines this offence, and s. 69 relates to treasonable offences. Sections 6 and 7 of the R. S. C. c. 146, are still in force. Under s. 67 of the Code, every one is guilty of an indictable offence, who knowing that any person is about to commit treason, does not, with all reasonable despatch, give information thereof to a justice of the peace, or use other reasonable endeavours to prevent the commission of the crime. Treason and treasonable offences must be prosecuted within three years; see Code, s. 551 (*a*) (i) (ii). As to the indictment, see Code, s. 614; and as to the evidence, see Code, s. 684.

No person can be prosecuted for treason or any treasonable offence, for any overt act of treason expressed or declared by open and advised speaking, unless information of such overt act and of the words by which the same was expressed or declared, is given on oath to a justice within six days after the words are spoken and a warrant for the apprehension of the offender is issued within ten days after such information is given. Code, s. 551(2).

UNLAWFULLY DEFILING WOMEN.

As to these offences see Code ss. 185 to 190. Under s. 185 (see *ante*, p. 547), the prosecution must be within one year. See Code, s. 551 (*c*) (viii).

UNLAWFUL DRILLING.

As to this offence see s. 87 of the Code.

UNSEAWORTHY SHIPS.

As to sending such to sea, see ss. 256 and 257 of the Code.

VAGRANCY.

Every one is a loose, idle or disorderly person or vagrant who—

(*a*) not having any visible means of maintaining himself lives without employment;

(*b*) being able to work and thereby or by other means to maintain himself and family wilfully refuses or neglects to do so;

(*c*) openly exposes or exhibits in any street, road, highway or public place, any indecent exhibition;

(*d*) without a certificate signed, within six months, by a priest, clergyman or minister of the Gospel, or two justices of the peace, residing in the municipality where the alms are being asked, that he or she is a deserving object of charity, wanders about and begs, or goes about from door to door, or places himself or herself in any street, highway, passage or public place to beg or receive alms;

(*e*) loiters on any street, road, highway or public place, and obstructs passengers by standing across the footpath, or by using insulting language, or in any other way;

(*f*) causes a disturbance in or near any street, road, highway or public place, by screaming, swearing or singing, or by being drunk, or by impeding or incommoding peaceable passengers;

(*g*) by discharging firearms, or by riotous or disorderly conduct in any street or highway, wantonly disturbs the peace and quiet of the inmates of any dwelling-house near such street or highway;

(*h*) tears down or defaces signs, breaks windows, or doors or door plates, or the walls of houses, roads or gardens, or destroys fences;

(*i*) being a common prostitute or night walker, wanders in the fields, public streets or highways, lanes or places of public meeting or gathering of people, and does not give a satisfactory account of herself;

(*j*) is a keeper or inmate of a disorderly house, bawdy-house or house of ill-fame, or house for the resort of prostitutes;

(*k*) is in the habit of frequenting such houses and does not give a satisfactory account of himself or herself; or

(*l*) having no peaceable profession or calling to maintain himself by, for the most part supports himself by gaming or crime, or by the avails of prostitution. R. S. C. c. 157, s. 8. Code, s. 207.

Every loose, idle or disorderly person or vagrant is liable, on summary conviction before two justices of the peace, to a fine not exceeding fifty dollars or to imprisonment with or without hard labour for any term not exceeding six months, or to both. Code, s. 208.

A conviction under s. 207 (*i*), should show a request made on the woman at the time of her arrest to give an account of herself, and that she did not give a satisfactory account, and that therefore the arrest was made. A conviction in the words of the statute, "not giving a satisfactory account of herself," does not imply or show such prior demand or request to give an account, and is therefore bad. R. v. Levecque, 30 Q. B. (Ont.) 509.

This Act does not, in its true construction, declare that being a prostitute, etc., makes such persons liable to punishment as such, but only those who, when found at the places mentioned, under circumstances suggesting impropriety of purpose, on request or demand, are unable to give a satisfactory account of themselves. By way of illustration. If any one of these classes be found on the street after nightfall, and a policeman thought that the prostitute or night-walker was out for the purpose of prostitution, or the bawdy-housekeeper, to entice men or girls to her house, or the frequenter with any improper motive, he might, under this statute, at once demand an account of the purpose for which they were there, and if no satisfactory account were given, at once take such person into custody. If, however, upon such demand, it appeared that the purpose were quite proper, then no cause for arrest would exist under this statute. The object of the Act seems to be to give to the police the power to remove such persons from places where they might be offensive or dangerous to the public, and to throw on them the onus of explaining the purpose or reason why they were in such places. R. v. Arscott, 9 O. R. 541.

It is not the keepers of the houses that are required to give a satisfactory account of themselves, but the frequenters. The former can give no excuse if the charge be true, but frequenters may go there for a lawful purpose, such as to collect a debt or other necessary purpose. Where the conviction and warrant charged that the plaintiff "did unlawfully keep a certain bawdy-house, and house of ill-fame, for the resort of prostitutes, and is a vagrant within the meaning of the statute," not alleging that she did not give a satisfactory account of herself, they were held sufficient, though it would have been otherwise in the case of a frequenter. Arscott v. Lilley, 11 O. R. 153.

A person charged as an inmate of a house of ill-fame under s. 207 (*j*) of the Code, need not be called upon to account for her presence in the house before arrest. This is only necessary under s. 207 (*k*) in the case of frequenters. See R. v. Remon, 16 O. R. 560.

The case of R. v. Levecque 30 Q. B. (Ont.) 509, is distinguishable from the above, for in Levecque's case the charge was of wandering in the streets under s-s. (*i*). A frequenter may be there for a lawful purpose and able to give a satisfactory account of himself.

A conviction, under the Act, for keeping a house of ill-fame, ordered payment of a fine and costs, to be collected by distress and in default of distress, ordered imprisonment, and the court held that there was power to so award imprisonment. R. v. Walker, 7 O. R. 186.

The Act makes no provision for imposing costs, or collecting either fine or costs. But as the provisions of that part of the Code relating to summary convictions are applicable, costs may be awarded under s. 867 of the Code, and the fine or penalty, and costs, may be levied under s. 872. *Ib.*

Under (*f*), to cause a disturbance in any street, or highway, by screaming, swearing, singing, or by being drunk, or by impeding, or incommoding peaceable passengers, renders the party liable under the Act.

The defendant was convicted and committed, for that he " unlawfully did cause a disturbance in a public street * * by

being drunk, and then was a vagrant, loose, idle and disorderly person within the meaning of the Act. The evidence disclosed that the defendant was drunk, and that he was guilty of impeding and incommoding peaceable passengers, but it negatived his causing a disturbance in the street by being drunk, and the court ruled that no offence of the nature described in the conviction, and commitment was shown, and the same was quashed. R. v. Daly, 12 P. R. (Ont.) 411.

A defendant was summarily convicted under s. 207 (*l*), as "a person having no peaceable profession or calling, to maintain himself by, but who does, for the most part, support himself by crime." The evidence shewed that the defendant did not support himself by any peaceable profession or calling, and that he consorted with thieves, and reputed thieves, but the witnesses did not positively say that he supported himself by crime. The court held that it was not to be inferred from the evidence that he supported himself by crime, and that to sustain the conviction there should have been statements that witnesses believed he got his living by thieving, or by aiding and acting with thieves, or by such other acts and means as shewed he was pursuing crime. R. v. Organ, 11 P. R. (Ont.) 497.

The prisoner was convicted, under s. 207 (*l*), of having no peaceable profession or calling to maintain himself by, but who, for the most part, supported himself by gaming, and of then being a loose, idle, disorderly person and a vagrant. It was held that to sustain the conviction the evidence should show that the accused had no peaceable profession or calling to support himself by, (2) that he practised gaming, (3) that from his practice he derived some substantial profits, and (4) that these profits constituted the larger part of his means of support. R. v. Davidson, 15 L. N. 251.

A prisoner had been convicted by one justice of the peace of being a vagrant, and the conviction was held bad, as it did not appear that the justice was a police magistrate. R. v. Clancey, 7 P. R. (Ont.) 35; for one justice has no power to convict under s. 208 of the Code,

Where there is a police magistrate, it should appear that the person convicting is the police magistrate himself, or that he is acting for the police magistrate by reason of his illness or absence, or at his request. See R. S. O. c. 72, s. 6.

Under s. 208, the justices may fine only, or they may award imprisonment, or they may fine and imprison. But if they fine only there is no power to award imprisonment as an alternative punishment on default of payment of the fine. R. v. Lynch, 19 O. R. 664.

As the Act provides no mode of raising or levying the penalty, the justice may, under s. 872 of the Code, issue a distress warrant for the purpose of enforcing the same, and it is only after default of distress, where a fine only is inflicted, that imprisonment can be awarded as an alternative remedy. R. v. Walker, 7 O. R. 186.

Two justices of the peace for the city of Toronto, in the absence of the police magistrate for the said city, convicted the defendant for vagrancy under this section, and it was held that they had jurisdiction as two justices, and the court declined to consider the effect of a special agreement between the police magistrate and one of the convicting justices, under which the latter was specially employed by the police magistrate to assist him at a stated salary. R. v. Lynch, 19 O. R. 664.

A licensed carter, who, contrary to a city ordinance, loitered near the entrance to a hotel in the city of Montreal, and solicited passengers for conveyance in his cab, is not a loose, idle or disorderly person, or a vagrant within the meaning of s. 208, more especially where it is not proved that such loitering obstructed passers-by, or incommoded guests in the hotel. Smith v. R., 4 Mont. L. R. Q. B. 325.

Prisoners charged with an offence meriting and receiving a severer sentence than is commonly imposed for a first conviction for larceny, or even more serious offences, are entitled to insist that such offence shall be proved at least as precisely, and by evidence of as high a degree, in a police court as in an assize court. Statements of suspicion, hearsay statements, or statements that cheques found on a prisoner arrested for vagrancy,

were such as are used by confidence men, are not admissible. R. v. Bassett, 10 P. R. (Ont.) 386.

This Act does not apply to the case of a person using insulting language to a passer-by, from the window of his residence. R. v. Poulin, 5 L. N. 347.

A municipal by-law to punish persons intoxicated on the public streets, who are not necessarily vagrants, is not repealed by the 32 & 33 V. c. 28, subsequently passed. Winslow v. Gallagher, 27 S. C. N. B. 25.

As to the power to issue a warrant to search for vagrants in any disorderly house, bawdy-house, tavern, or boarding-house, see s. 576 of the Code.

VEXATIOUS ACTIONS.

(*See ante*, p. 313.)

VEXATIOUS INDICTMENTS.

The provisions of what was called "The Vexatious Indictments Act" are extended to all indictable offences. See Code, s. 641.

As to the meaning of the expression, "Attorney-General," see Code, s. 3 (*b*).

Under this section it is not sufficient that the name of the Attorney-General be signed by his representative instead of himself. R. v. Ford, 14 Q. L. R. 231; R. v. Abrahams, 6 S. C. R. 12.

VIOLENCE, THREATS AND INTIMIDATION.

Every one is guilty of an indictable offence and liable, on indictment or on summary conviction before two justices of the peace, to a fine not exceeding one hundred dollars or to three months' imprisonment with or without hard labour, who wrongfully, and without lawful authority, with a view to compel any other person to abstain from doing anything which he has a lawful right to do, or to do anything from which he has a lawful right to abstain—

(*a*) uses violence to such other person, or his wife or children, or injures his property; or

(*b*) intimidates such other person, or his wife or children by threats of using violence to him, her or any of them, or of injuring his property; or

(*c*) persistently follows such other person about from place to place; or

(*d*) hides any tools, clothes or other property owned or used by such other person, or deprives him of, or hinders him in, the use thereof; or

(*e*) with one or more other persons follows such other person, in a disorderly manner, in or through any street or road; or

(*f*) besets or watches the house or other place where such other person resides or works, or carries on business or happens to be. R. S. C. c. 173, s. 12. Code, s. 523.

Sub-section 5 of s. 12 of the R. S. C. c. 173, is still in force See Code, s. 981, schedule two.

See s. 524 as to intimidation of any person to prevent him from working at any trade, and s. 525 to prevent dealing in wheat or seamen from working, and s. 526 as to preventing any person from bidding for public lands.

The appellant and respondent were workmen in the same yard, members of different trade unions. The trade union to which the respondent belonged having resolved to strike if the appellant did not leave his society and join theirs, the respondent informed the appellant of this without threatening him with violence to person or property in case of refusal. The appellant refused to join the respondent's society and was dismissed in consequence by his employer in order to avoid a strike. He stated in evidence that "he was afraid, because of what respondent had said, that he would lose his work and could not obtain employment anywhere where the respondent's society predominated numerically over his own society. The court held that this did not afford evidence of intimidation by the respondent within the meaning of the section. Gibson v. Lawson, L. R. 2 Q. B. 545 (1891).

The defendant was summarily convicted for that he, wrongfully and without legal authority, followed the informant in a disorderly manner with two or more other persons in certain streets, "with a

view to compel him to abstain from doing acts which he had a legal right to do," and the court held that these acts ought to have been specified in the conviction. An amendment was refused because the offence constituted by the Act had not been proved before the magistrate and the conviction was quashed. R. v. McKenzie, L. R. 2 Q. B. 519 (1892).

It is perfectly legal for workmen to protect their interests by meeting or combining together, or forming unions in order to determine and stipulate with their employers the terms on which they will consent to work for them. But this right to combine must not be allowed to interfere with the right of those workmen who desire to keep aloof from the combination, to dispose of their labour with perfect freedom as they think fit. Nor must it interfere with the rights of the masters to have their contracts duly carried out. Infraction of such rights will bring the wrong-doer within the pale of the criminal law of conspiracy.

Under the English Act an appeal was entered from a conviction, and due notice given to the prosecutor and convicting justices, and the latter, as well as the prosecutor, were named as respondents in the appeal, but the justices did not appear, and it was held that the court, in quashing the conviction, had no power to award costs against the justices. R. v. Goodall, L. R. 9 Q. B. 557.

See the R. S. C. c. 173, s. 12, s-s. 5, as to what magistrates are disqualified from, acting in any case of complaint or information under this section, or as a member of any court for hearing any appeal in any such case.

VOLUNTARY AND EXTRA JUDICIAL OATHS.

(*See* OATHS.)

WAREHOUSEMEN.

Section 376 of the Code makes it an indictable offence to give knowingly any warehouse receipt or acknowledgment. See also s. 377 of the Code.

Where a false warehouse receipt is given in the name of any firm, company or co-partnership, the person by whom such thing

is actually done, or who connives at the doing thereof, is guilty of the offence, and not any other person. Code, s. 379.

WEAPONS.

(*See* FIRE ARMS.)

WEIGHTS AND MEASURES.

The R. S. C. c. 104, contains the law as to weights and measures. See 51 V. c. 25; 52 V. c. 17.

Under this Act numerous penalties are imposed for different offences. Section 25 creates a penalty for having false or unjust weights, scales or measures; s. 27, for making or selling the same, and s. 29 imposes a penalty for using unstamped weights or measures.

Under s. 63, penalties if under $50, are recoverable before one justice, and if over $50, before two justices of the peace for the district, county or place in which the offence is committed, and the provisions of "The Act respecting Summary Proceedings before Justices of the Peace" shall, subject to the provisions of the Act, apply to all proceedings thereunder.

Under s. 31 of this Act, the offender is made liable to imprisonment for a subsequent offence, and this is the only instance in the Act where an offender is made liable to imprisonment. R. v. Dunning, 14 O. R. 55.

But this seems of little importance, as the 63rd section of the Act incorporates the provisions of the Act as to summary convictions and in default of sufficient distress, there may be an award of imprisonment.

Earthenware vessels unstamped, but ordinarily used as containing a certain quantity according to Imperial measure, are "measures;" and if found unjust are liable to be seized, and the dealer, on whose premises they are found, is liable to penalties under the Act, for having them in his possession. Washington v. Young, 5 Ex. 403; R. v. Oulton, 3 E. & E. 568. They are not deemed unjust if against the seller himself. Booth v. Shadgett, L. R. 8 Q. B. 352.

A weighing-machine, which from its construction, was liable to variation from atmospheric and other causes, and required to be adjusted before it was used, was held not incorrect upon examination within the meaning of the statute, if examined by the inspector before it had been adjusted. London & N. W. R. Co. v. Richards, 2 B. & S. 326.

A railway company kept a weighing-machine which for a fortnight had been so out of repair that when anything was weighed by it the weight appeared to be four lbs. more than was really the weight. It was held that the company were liable to conviction for having in their possession a weighing-machine which on examination was found to be incorrect or otherwise unjust. Great W. R. Co. v. Bailie, 5 B. & S. 928.

A shopkeeper made use of a pair of scales which had a hollow brass ball hanging upon the weight end of the beam, constructed so as to allow shot to be placed in the interior, and easily removable from the beam by merely lifting it off. When the ball was removed and replaced after the shot with which it was partly filled had been taken out it was found that the scales were unjust, and against the purchaser. It was held that there was evidence that these scales were weighing-machines which were incorrect or otherwise unjust. Carr v. Stringer, L. R. 3 Q. B. 433.

WIFE, NEGLECTING TO MAINTAIN.

(*See* MAINTENANCE OF WIFE.)

WOUNDING.

See ss. 241, 242 & 243 of the Code; and as to arrest by any person without warrant in such cases, see Code, s. 552, part XIX.

WRECKS AND SALVAGE.

The R. S. C. c. 81, s. 36, makes it felony to prevent, impede, or endeavour to prevent or impede any shipwrecked person in the endeavour to save his life, or to prevent or impede the saving of any wrecked vessel, or to steal or maliciously destroy any wreck. Various other offences under the Act are made misdemeanours.

So under s. 494 of the Code, attempting to cast away or destroy any ship whether completed or unfinished is an indictable offence.

INDEX.

A.

Abandoning Child, 376, 377

Abduction, 305-307

Abettors—
in cases of offences punishable on summary conviction, 147

Abortion, 308

Accessories, 308-312
information against, 300

Accidents on Ships, 312

Accomplices, 312

Accusation, 119

Accused—
statement of, 90
discharge of, 92

Actions against Justices—
on quashing convictions, 245, 318, 319, 320
form of, whether trespass or case, 313-318
notice of, 322-331
limitation of, 313-322
costs, 332

Adjournment, 83, 171, 172, 173, 174, 175
of hearing if party misled, 76, 160
before or during hearing, 83, 171, 172, 173, 174
effect of, on justices' jurisdiction, 173

Adjudication, 188, 189

Administering Drugs, 333

Admiralty Jurisdiction—
offences committed within, 55, 56

ADMISSIONS—
accused may make, 20
of accused as evidence against him, 92, 170
and confessions. See Evidence, 400
ADULTERATION—
of food, drink and drugs, 334-336
ADVERTISING—
for stolen property, 383
AFFIRMATION, 401
AFFRAY, 336
AGENCY, 336, 337
AGGRAVATED ASSAULTS, 337, 347
AGGRESSIONS by subjects of foreign states, 338
AIDERS, etc., 308
in offences punishable on summary conviction, 147
ALLEGIANCE, oaths of, 535
AMENDMENT—
of information or complaint, 161, 162
of conviction, 184, 185, 235, 238, 239
conviction cannot be amended after return on *certiorari*, 239
ANIMALS—
cruelty to, 393, 394, 395
APOSTACY, 339
APPEAL—
in matters over which Ontario has jurisdiction, 220-224
in cases of summary convictions, 220-227
hearing of, may be adjourned, 231-233
evidence on, 233, 234
notice of appeal, 227, 229, 230, 231
recognizance, 227, 230, 231
court shall try, 233
no judgment on, for defects of form, 234
to be heard on merits, 235
forms in cases of appeal, 293
from summary convictions under Statutes of Ontario, 221
costs on, 231, 235, 236, 248
costs, when abandoned, 249
from Acts of the Province of Ontario to the General Sessions, 222
notice of appeal and recognizance, 293
waiver of objections, 223
procedure on appeal to judge of County Court in Ontario, from summary convictions, 221-225
general form of notice of, against a conviction, 293
form of recognizance to try the, 293
abandoning same, 249
time for, 227, 228

APPEARANCE OF ACCUSED—
compelling same, 43
procedure on, 76, 170
waives summons or notice, 162
APPREHENSION OF OFFENDERS—
in district where offence committed, 226
APPRENTICE, 339
ARMS—
kept for dangerous purposes, 433, 434
ARMY, 396-516
ARREST, 339-344
when found committing an offence, 339, 340
of offenders caught in the act at night, 342
when constable may make, without a warrant, 339
of person bound by recognizance, 98
protection of persons arresting, 341-344
for breach of peace, 344
ARSON, 345-347
attempts to commit, 346
ARTICLES OF THE PEACE, 588
ASSAULTS, 347-357
definition of, 347-350
what amounts to, 350, 351
indecent, 352
conviction of, on trial for other offence, 353, 354
on a constable, 354, 355, 356
to what extent conviction of assault bars other proceedings, 199-201
certificate of dismissal of, 199, 200, 201
summary proceedings in cases of, 197, 198
payment of costs on conviction for, 109
where title to land arises, 147-352
justified in resisting, 347, 348
persons in possession, 348, 349, 350
ASSEMBLIES, unlawful, 563
ATTEMPTS, 357
to murder, 358
to commit offences. See Indictable Offences, 461
ATTORNEY—
cannot be a magistrate, 8
has right to appear in indictable cases, 83, 84, 86, 87
may appear in summary cases, 164-169
ATTORNEY-GENERAL—
consent of, 48, 49
AUCTIONEER, 373

B.

Backing Warrants, 66, 151, 218, 289
Bail, 100-107
on remand or adjournment of hearing, 85
accused may be admitted to, 100-106
when two justices required, 100, 101
amount of and qualification of sureties, 103, 104
as to when bail will be granted, 100-107
justices cannot bail in cases of treason or offences, punishable with death, 106
by Judge of Superior Court after committal for trial, 105, 106
when Judge of Superior or County Court may order, 106, 107
recognizance of, 100
warrant of deliverance, on bail being given for a prisoner already committed, 330
transmission of information and evidence, 106
complaint for a person charged with an indictable offence, 302
Bailees, larceny by, 473
Banks, 359
Barratry, 359
Battery, 356. See Assault, 347
Bawdy or other disorderly houses, 124, 360, 596
search in for vagrants, 74
Bench Warrant, 96
Betting and Pool Selling, 360-363
Bigamy, 363-367
Bill of Costs, 204. See Costs, Conviction.
Blasphemy, 367
Bodily Harm, 367
Bribery, 368, 369
Bridges, 369
Bucket Shops, 369
Buggery, 369
threats to accuse of. See Threats.
Burglary, 369-372
attempt to commit, 372
By-Law, 372-375
conviction under, 182

C.

Canned Goods, 376
Carter, 374
Case—
stating for the opinion of the court, 249, 250-251

CAUTION—
to prisoners in indictable offences, 90-92
as to witnesses not necessary, 92
CERTIFICATE—
of non-appearance to be endorsed on recognizance, 86-133, 134, 219
to constable of having received prisoner, 50
of indictment being found, 95, 96
of dismissal, form of, 136-196
of previous conviction, 241, 242, 243
of dismissal of assault, 199, 200, 201
of clerk of the peace that costs are not paid, 248
of oath of justice as to property qualification, 7, 8
CERTIORARI—
conviction not to be removed by, 237-240
when writ of, may issue, 237-240
conviction affirmed in appeal, 237, 238
notice of motion for, 239, 240
security on, 245, 246
CHAMPERTY, 508
CHASTISEMENT—
lawful, not an assault, 351
CHEATS AND FRAUDS, 376
CHILD—
abandoning, 376, 377
neglecting to maintain, 378, 379
stealing, 379
concealing birth of, 385, 386, 387
CHINESE IMMIGRATION, 379, 380
CHURCHES, 380
disturbing worship in, 380
CIVIL PROCEEDING FOR SAME CAUSE, 19, 45
CLAIM OF RIGHT, 37-39
CLERK OF PEACE to publish returns of conviction, 257
CLERKS—
see embezzlement by
fees receivable by justices of the peace or their, 204-207
COCK-FIGHTING, 394, 395
CODE, when it takes effect, 43, 44
COINAGE OFFENCES, 70, 380, 381
COMMITMENT—
for trial, 22, 50, 51, 89, 92, 94, 95
of witness for refusing to be sworn, 83
of witnesses for refusing to enter into recognizance, 99
if distress would be ruinous, 218
if no sufficient distress, 207-217
warrant of commitment for trial, 94

COMMITMENT—*Continued.*
in default of distress, 207-216
warrant of, one Justice may issue, 147-150
in indictable offences, 89
in default of sureties. See Sureties.

COMMON ASSAULT, 347

COMMON PURPOSE, 382

COMPENSATION or satisfaction, 195, 196

COMPETENCY OF WITNESSES—
See Evidence, Witness

COMPLAINT—
when it may be laid, 51
difference between information and complaint, 155
certain, must be in writing, 152
when it need not be in writing or on oath, 152
must be for one matter, 152, 153
may be laid in person or by attorney, 159
negativing exception, 156-166
no objection for form of, 160
or information, when to be upon oath, 152
or information, time for making, 146
for sureties for the peace by the party threatened, 297
of bail for a person charged with an indictable offence, 302

COMPROMISE, does not prevent hearing, 169

COMPOUNDING OFFENCES, 383, 384
prosecutions for selling liquor without license, 384
offering rewards under promise of secrecy, 383

COMPULSION, 384, 385
effect of, in removing crime, 384, 385

CONCEALMENT OF BIRTH, 385, 386, 387

CONFESSION, 91, 92
when admissible, 402

CONSECUTIVE IMPRISONMENT, 456, 457

CONSPIRACY, 387-391

CONSTABLE—
bound to execute warrant, 63
to serve summons for witness, 80
receipt to be given to, by gaoler and justice, 50, 107
to attend and depose to service of summons, 60, 61
may arrest without warrant, when, 339

CONTAGIOUS DISEASES, 392

CONTEMPT—
of court, 33, 34, 35
conviction of witness for, 81

CONTRACT—
criminal breaches of, 392
CONVICTION, 175, 176
forms of, 135, 176, 177
costs on, 202, 203
minute or memorandum of, 176, 190, 191
blanks filled up before signature, 178
to be under seal, 176-191
general requisities of, 178-192
sufficient to follow forms, 177
when it must negative exceptions, 191, 192
amendment of, 184, 185, 238, 239
on admission by defendant, 170
after hearing, 175
transmission of, in case of appeal, 241
when not to be set aside for defect of form, 132, 243, 244, 245, 247, 248
when it must be several and not joint against each offender, 184
of joint offenders, 195
protection from action when quashed, 245
return of, 252, 258, 561
must show place, 178, 179
must show an offence, 179, 180, 181
description of offence in, 181
day on which act committed, 181
under a by-law, 182
for contempt, 81
must not be in alternative, 183
following words of statute, 183, 184
for several offences, 185, 186, 258
evidence to support, 186, 187
penalty or punishment in 187, 188
minute of adjudication, 188, 189
security on moving to quash, 245, 246
must be quashed before action, 318, 319, 320
COPY OF ORDER—
defendant to be served with, etc., 197
of depositions. See Depositions.
COPYRIGHT, 392, 393
CONTEMPT—
power of justice in cases of, 33, 34, 35, 81
CORPORATIONS—
justices cannot hear charges against, 41, 42
CORONER—
duty of a, 68, 69
inquisition in pencil, 68, 69

Costs—
of frivolous appeals, 235, 263
may be awarded in all cases of summary convictions, 202
when prosecutor liable for, 94
person convicted liable for, 108, 109, 110
on dismissal, 203
to be specified in conviction or order, 204
may be recovered by distress, 204, 218
of appeal, to whom payable, 248
distress and commitment for non-payment of, 218
fees, receivable by justices or their clerks, 204, 207
on conviction for assault, 109
in case of summary trials, 129
of commitment and conveying to gaol, 210, 211
certificate of non-payment of, 248
warrant of distress or commitment for, 248

Counsel or Attorney—
prosecutor may be heard by, 83, 164
prisoner entitled to, 86, 87
may examine witness for accused, 87, 164, 165
may represent defendant, 169
See also Attorney.

Counterfeit Money, 382

County Judge may order party committed for trial to be admitted to bail, 105, 106

Court—
jurisdiction of, 45
place where justices take examinations in indictable cases, not an open, 83
but is in summary cases, 19. 164

Court of Quarter Sessions. See Sessions.

Creditor, defrauding, 392

Criminal information against justice, 32

Cross-Examination—
renders depositions admissible, 84
prisoners have a right to, 87, 164, 165

Cruelty to Animals, 393, 394, 395

D.

Damage, malicious, in general. See Mischief or Malicious Injuries, 517

Defence—
defendant may make full, 164
witnesses for, 92

Defrauding Creditors, 393

DELIVERANCE, warrant of, 106, 107

DEPOSITION OF WITNESSES—
to be taken before committing for trial, 86
transmission of to clerk of court, 99
how taken, 86, 87, 88
copies of, 24, 92. 97
when defendant entitled to a copy of, 97
when, can be used at trial as evidence, 415
in case of death, illness or absence, 415-417
by constable of service of summons, 300
of witnesses on the remand day, 301

DEPOSITS, returns of, 395

DESERTER—
where arrested, 56

DESERTION, 396

DESERTING family. See Vagrants.
See also Maintenance, 508

DETAINER, forcible entry and, 435-437

DISCHARGE—
of accused, 92, 93

DISMISSAL—
if prosecutor does not appear, 169-171
order of, on information or complaint, 196
certificate of, 132, 136, 196, 285
prior a bar, 196, 197
form of order of, on an information or complaint, 284

DISORDERLY HOUSE—
procedure on trial, 124, 125, 126

DISTRESS, 207-217
proceeding in cases of, if sufficient be not found, 218
when warrant of, issued, defendant may be bailed, 219
cases in which warrant of, may be issued, 207, 208, 209
where the issue of, would be ruinous, 218
warrant of, commitment for want of, 207-217
warrant of, for costs, 218
warrant of, for costs of appeal, etc., 248, 295
may be endorsed for execution in another county, 218
commitment where distress ruinous, 219
one justice may issue warrant of, 147
forms for warrant of. See Forms, 285.
for costs of conveying to gaol, 210, 211, 214
where an information or complaint is dismissed with costs, 218
payment of, 251, 252

DISTURBANCE in street, 596-598
of public worship, 380

DOCUMENTS, impounding, 445
DIVISIONS, territorial meaning of, 66
DRILLING, unlawful, 595
DRIVING—
wantonly and furiously, 396
DRUM, beating of, 373
DRUNKENNESS—
crimes committed through, when punishable, 39
conviction for, 182
DYING DECLARATIONS, 414
See Evidence.

E.

ELECTIONS—
offences relating to, 397, 398
EMBEZZLEMENT. See Larceny.
by clerks or servants, 477, 478
who is clerk or servant, 478
evidence of embezzlement, 479
no distinction between, and larceny, 469, 477, 478
EMBRACERY, 398, 399
ENDORSEMENT in backing a warrant, 66, 67, 262
ENLISTMENT, foreign, 437
ENTICING TO DESERT, 396
ENTRY AND DETAINER, forcible, 435, 437
ESCAPE, 399, 400
EVIDENCE, 400
rules of, 400
mode of taking, 20, 86, 87
of guilty knowledge, 419, 420, 421, 422
statement of accused, 90
at hearing in summary cases, 170
where information negatives exception, 166
on appeals from summary convictions, 233, 234
taking examinations on oath, 400, 401
form of oath, 401
cross-examination of witnesses as to previous statement in writing, 413, 419
witnesses must speak of facts only, 401
as to character, 402
prisoner can give evidence for himself, 406, 407
taking, in shorthand, 86, 87
of conviction or certificate of dismissal, 133
when not on oath, 403, 404
wife against husband, 406, 407

EVIDENCE—*Continued.*
when two witnesses required, 411, 412
corroboration of witness, 409, 410, 411, 412
competency of witnesses, 403, 405, 406, 407
affirmations, 401
admissions and confessions, 402
witness who is ill or absent, 415, 416, 417, 418
leading questions, 402
witnesses bound to criminate themselves, 408, 409
cross-examination, 402, 418, 419
in cases of receiving stolen goods, 422
of proclamations, 247
hearing further, 83
evidence of child, 403, 404
solicitor and client, 405, 406
in Ontario, 407, 408
dying declarations, 414, 415
confessions, 402, 403
EXCEPTIONS—
when to be negatived in conviction, 191, 192
EXCISE, 423
EX PARTE—
justice may proceed, if summons not obeyed, 166, 167
but not in indictable cases, 87
EXPLOSIVE SUBSTANCES, 423, 424
may be seized on search warrant, 71
EXPRESS WAGGON, 373, 374
EXTORTION—
by public officers, 425
EXTRADITION, 426

F.

FACTORIES' ACT, 537-539
FALSE ACCUSATIONS, to extort. See Threats
FALSE PERSONATION, 543, 544
FALSE PRETENCES, 426, 432
what it is, 426
giving a cheque without funds, 428
difference between false pretences and larceny, 432
FEES—
to justices, constables and witnesses, 204-207
FELONY—
and misdemeanour, distinction between abolished, 45, 432, 433
attempt to commit, 357, 358

FEMALES—
abduction of, under sixteen, 306
FERRIES, 433
FERTILIZERS, 433
FINES—
time for payment of, 22, 23
collecting by distress, 208
FIREARMS, 433, 434
procedure on trial of offences against the Act preventing the improper use of, 434
FISHERIES, 434, 435
FOOD, selling what is unfit for, 435
FORCIBLE ENTRY AND DETAINER, 435, 436
FOREIGN ENLISTMENT OFFENCES, 437
FORGERY, 437, 445
alteration of document is, 437, 441
evidence of one witness must be corroborated, 409, 410, 412, 441
there must be an intent to defraud, 441, 442
the instrument must be apparently valid, 439, 440
must be of a document or writing, 440
uttering the forged instrument, 442
defacing forged bank notes, 70
FORMS—
warrant to convey before a justice of another county, 259
receipt to be given to the constable by the justice for the county in which the offence was committed, 259
information and complaint for an indictable offence, 260
warrant to apprehend a person charged with an indictable offence committed on the high seas or abroad, 260
summons to a person charged with an indictable offence, 261
warrant in the first instance to apprehend a person charged with an indictable offence, 261
warrant when the summons is disobeyed, 262
information to obtain a search-warrant, 263
of conviction, 176, 177
warrant to search, 263
certificate of indictment being found, 277
warrant to apprehend a person indicted, 277
of committment of a person indicted, 278
to detain a person already in custody, 289
endorsement in backing a warrant, 262, 289
deposition that a person is a material witness, 79
summons to a witness, 264
warrant when witness has not obeyed a summons, 264
for a witness in the first instance, 265
of commitment of a witness for refusing to be sworn or to give evidence, 266

FORMS—*Continued.*

deposition of a witness, 269
witnesses on remand day, 301
statement of the accused, 269
recognizance to prosecute, 271, 272
notice of recognizance where there is a surety for a witness, 301
commitment of a witness for refusing to enter into a recognizance, 272
subsequent order to discharge the witness, 273
warrant remanding prisoner, 267
order to bring up accused before expiration of remand, 302
recognizance of bail instead of remand on adjournment of examination, 268
warrant when a witness has not obeyed the subpœna, 265
certificate of non-appearance to be endorsed on recognizance, 268
recognizance of bail, 274
warrant to convey accused before a justice of the county in which the offence was committed, 259
receipt to be given to constable by justice of county in which the offence was committed, 259
notice of recognizance, 301
warrant of deliverance, on bail being given for a person already committed, 275
commitment, 271
gaoler's receipt to constable for prisoner, 275
indictment, forms of, 276
complaint of bail for a person charged with an indictable offence, 302
warrant to apprehend the person charged, 303
commitment of the person charged on surrender of bail, 303
form of recognizance where the prosecutor requires the justice to bind him over to prosecute after the charge is dismissed, 270
examples of the manner of stating offences, 276
memorandum on documents produced in evidence, 301
minutes of proceedings at the hearing, 304
certificate of dismissal of juvenile offenders, 144
conviction of juvenile offenders, 144
return of convictions, 297

FORMS IN CASES OF SUMMARY CONVICTIONS AND ORDERS—

information or complaint, 260
summons to the defendant upon an information or complaint, 261
warrant when the summons is disobeyed, 262
in the first instance, 261
certificate of non-appearance to be endorsed on the defendant's recognizance, 293
summons to a witness, 264

FORMS—*Continued.*
warrant where a witness has not obeyed a summons, 264
for a witness in the first instance, 265
commitment of a witness for refusing to be sworn or give evidence, 266
warrant to remand a defendant when apprehended, 267
conviction for a penalty to be levied by distress, and in default of sufficient distress, by imprisonment, 279
a penalty, and in default of payment, imprisonment, 280
where the punishment is by imprisonment, 281
order for payment of money to be levied by distress, and in default of distress, imprisonment, 281
payment of money, and in default of payment, imprisonment, 282
any other matter where the disobeying of it is punishable with imprisonment, 283
of dismissal of an information or complaint, 284
certificate of dismissal, 285
warrant of distress upon a conviction for a penalty, 285
an order for the payment of money, 286
endorsement in backing a warrant, 289
constable's return to a warrant of distress, 290
warrant of commitment for want of distress, 290
warrant of commitment upon a conviction for a penalty in the first instance, 287
warrant of commitment on an order in the first instance, 288
warrant of distress for costs upon an order for dismissal of an information or complaint, 291
warrant of commitment for want of distress, 292
certificate of clerk of the peace that the costs of an appeal are not paid, 294
warrant of distress for costs on an appeal against a conviction or order, 295
warrant of commitment for want of distress in the last case, 296
form of order of dismissal of an information or complaint, 284
form of certificate of dismissal, 285
notice of appeal against a conviction or order, 293
form of recognizance to try the appeal, 293
form of notice of such recognizance to be given to the appellant and his sureties, 294
return of conviction, 297
recognizance for the sessions, 298
FORMS UNDER THE ACT FOR THE SPEEDY TRIALS OF INDICTABLE OFFENCES, 117-121
form of record when the prisoner pleads not guilty, 117

FORMS—*Continued.*
form of record when the prisoner pleads guilty, 118
warrant for a witness, 118
conviction for contempt, 119
accusation, 119
sheriff's notice, 120
FORMS UNDER THE ACT RELATING TO THE TRIAL OF JUVENILE OFFENDERS FOR INDICTABLE OFFENCES, 144
FORMS UNDER THE ACT RELATING TO SUMMARY TRIAL OF INDICTABLE OFFENCES, 135, 136
conviction, 135
certificate of dismissal, 136
conviction upon a plea of guilty, 135
FORTUNE TELLING, 445
FRANCHISE, 446
FRAUDULENT MARKING OF MERCHANDIZE, 446
FREQUENTERS OF HOUSES OF ILL-FAME, 598. See House of Ill-fame.
FUGITIVE OFFENDERS, 446
FURIOUS DRIVING, 396, 447

G.

GAME, 447
GAMBLING practices in public conveyances, 447
GAMING-HOUSES, 448, 451
GAOLS, 456
payment to keepers of, 252
GAS, 451, 452
GENERAL SESSIONS OF THE PEACE, 584
GOVERNMENT HARBOURS, 452
GRIEVOUS BODILY HARM, 452
GUILTY KNOWLEDGE—
evidence of, 422

H.

HARBOR MASTERS, 452
HAWKERS, 453, 454
HEARING—
proceedings on, 83, 86, 90
where both parties appear, 169
may proceed in absence of either party, 166, 169
but not in indictable cases, 87
HEIRESS, abduction of, 305
HIGH TREASON, 595

HOLES AND EXCAVATIONS, 451, 455
HOLIDAY, meaning of, 66
HOMICIDE, 523
HOUSEBREAKING, 371
HOUSE OF ILL-FAME, 123-126, 129, 130, 596, 601
conviction for keeping, 179, 181, 191, 598
HUMAN REMAINS, misconduct as to, 69, 70
HUSBAND—
neglect, of to maintain wife, 508, 511

I.

IDLE AND DISORDERLY PERSONS, 596. See Vagrants.
IGNORANCE—
crimes committed through, 455, 556
ILL-FAME, houses of, 123, 124, 125, 126, 596, 601
search for vagrants in 74
IMMIGRATION, 456
IMPRISONMENT, 456, 457
in default of distress, 207-217
for subsequent offence, 219
INDECENCY, 458
INDIANS, 459, 461
evidence of, 405
INDICTABLE OFFENCES, 461, 464
criminal intention and malice, 461, 462
attempt, 463
disregard of statute, 463, 464
INDICTMENT—
vexatious, 601
certificate of, being found, 95, 96
binding prosecutor to prefer, 93, 94
INDORSEMENT ON WARRANT, 66, 67, 262
INFANTS—
crimes committed by, 464, 465
INFORMATION—
justice should be careful in taking, 17
laying of is commencement of prosecution, 18, 157
when it may be laid, 51
mode of taking, 53
necessity of, in indictable cases, 51, 52
form and requisites of, 51, 52, 53, 54
general form of, 260
how it differs from complaint, 155

INFORMATION—*Continued.*
requisites of, in cases of summary convictions, 147, 148, 149, 150
negativing exceptions, 156, 166
when information may be jointly laid against two, 157
effect of, in giving jurisdiction to justice, 158
when objections to, should be taken, 76, 160, 161
for one offence will not authorize conviction for another, 156, 162
amendment of information, 161
variances between, and evidence, 160, 161, 162, 163
may be laid in person or by attorney, 159
one justice may receive even where two justices must hear the case, 147
venue need not be stated in body of, 51
for one offence only, 153, 154, 156, 258
to obtain a search warrant, 70
complaint or, time for making, 146
complaint or, when to be in writing and on oath, 152
complaint or, objections to, not allowed, 160
to compel finding sureties for the peace, form of, 297
justice must consider, 54
may be waived, 61, 62, 76, 159
charging offences in disjunctive, 156
in alternative, 156
manner of stating offences in, 161, 162
as to two offences, 258
transmission to clerk of court, 99
against an accessory after the fact, 300
INJURIES—
mischief or malicious, 517
INQUISITION OF CORONER, 69
INSANITY, 465, 466
INSOLVENT COMPANIES, 466
INSPECTION, 466, 467
INSTALMENTS, payment by, 22, 23
INTEREST—
disqualifies a justice, 24, 25, 26, 27, 28, 29, 30, 31
objection may be waived, 30
a witness is not disqualified for interest, 401
INTIMIDATION, 601
INTOXICATING LIQUORS,
see Liquors. Spirituous liquors

J.

JOINT—
commission of offence, penalties how recoverable in such cases, 195

JOINT TENANTS, 472
JURISDICTION OF COURTS, 43
JURY—
appeals not triable by, 233, 234
JUSTICES OF THE PEACE, appointment of,
two classes of: 1. By commission, 1
2. By virtue of holding some other office, 1
powers and duties of, 1-42
qualification of, 5, 6, 7, 8
acts of either ministerial or judicial, 9, 14
number of, required to decide, 9, 10, 11, 12, 13, 50, 147-150
jurisdiction of, 4, 5, 13
limited as to place, 4, 5, 14, 15, 47, 49
general view of procedure before, 17, 18, 19, 20, 21, 22, 23, 24, 25
liability of, 32, 33, 34, 35, 36
not punishable for errors of judgment, 36, 37
interest of, 24-31
fees receivable by, or their clerks, 204-207
jurisdiction of, in cities, 3, 15, 16
penalty on, for acting without being qualified, 5, 245
protection of, from vexatious actions, 36, 37, 313, 333
limitations of actions against, 313, 322
property or title ousting jurisdiction, 37, 38, 39, 40
committal for trial, 16. 17
re-hearing case, 23, 24
misconduct of, 32, 33
notice of application against, 33
power to commit for contempt, 33. 34, 35, 258
compelling justices to act, 40, 41, 320, 321
prohibition to, 30, 41
preliminary inquiry by, 48, 50, 83, 89
discretion and duty of, when holding preliminary inquiry, 83, 89
power to administer oath, 165, 166
first issuing summons, have not exclusive jurisdiction, 65
majority should decide, 21
one may receive information and issue summons in all cases, 147, 148
where hearing before two, one may issue summons, 147
cases in which two are required, 9, 10, 11, 12, 13
where two required must act during whole of hearing, 147-149
functionaries who have the power of two justices, 12, 103, 149
one may compel witness to attend, and issue distress warrant, 147
acting before or after conviction need not be a convicting justice, 147

JUSTICES OF THE PEACE—*Continued.*
convictions by, 175, 176
must hear and determine if both parties appear, 169
JUVENILE OFFENDERS—
act respecting the trial and punishment of, 137
persons of not more than sixteen years of age may be summarily convicted, 137
justices may dismiss complaint in certain cases, 138
form of certificate of dismissal, 141
release of party obtaining certificate, 141
case may be sent for trial if justices think fit, 140
justices to give person charged the option of trial by jury, 140
conviction not to be quashed for defect of form, 141
conviction to be sent to clerks of peace, 141
no forfeiture, restitution, 141
recovery of penalties, 141
committal for non-payment, 142
orders of payment, how to be made, and upon whom, 142
forms under this part, 144

K.

KIDNAPPING, 467

L.

LANDLORD AND TENANT, 467, 468
LARCENY, 468
information for, 276
definition of term, 468
as to the subjects of, 469, 470
as to the persons who may commit, 469
returning things stolen, effect of, 475
distinctions between, and false pretences, 432
restitution of property stolen, 559
lost property, 475
joint tenants, 472
husband and wife, 471, 472
the taking must be against the will of the owner, 474, 475
where possession is obtained by fraud, 477
stealing trees, 470
by clerks and servants, 478
by bailees, 473, 474
LAWLESS AGGRESSIONS, 338
LEADING QUESTIONS, 402. See Evidence.

LIBEL, 481, 482

LICENSES—
Act respecting the obtaining of, for the sale of liquor in Ontario, 482

LIMITATION—
of actions against justices, 322
as to summary proceedings, 146
as to indictable offences, 18, 44

LIQUOR, 482, 503
license only to premises, 484
must be intoxicating, 484, 485
keeping for sale, 485
sale by clubs, 487
selling on Sunday, 487
in clubs, 489
in shops, 489
first and second offences, 490
compromising offences, 491
Liquor License Act in Ontario, 483
regulations and prohibitions under, 483
See Spiritous Liquors.

LIVERY STABLE, 503

LOST PROPERTY. See Larceny.

LOTTERIES, 503, 507

LUMBER, 507

M.

MAGISTRATES—
powers and duties of. See Justices.

MAINTENANCE AND CHAMPERTY, 508

MAINTENANCE OF WIFE, child, etc., 508, 511

MALFEASANCE BY PUBLIC OFFICERS, 425, 536

MALICE DEFINED—
See Murder, 523

MALICIOUS INJURIES, 517, 522
must be reckless without colour of right, 518
bona fide question of title, 518, 519
obstructing railway, 519
injuries to cattle and other animals, 520
claim of right negativing malice, 521-522

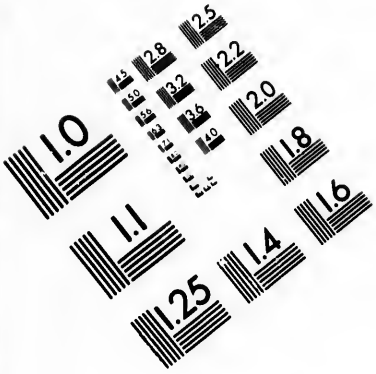
MANDAMUS TO JUSTICE, 440-1

MANSLAUGHTER, 523
See Murder.

MARRIAGE—
solemnization of, 511
MARRIED WOMEN—
criminal liability of, 511, 512
MASTER AND SERVANT, 512, 513
breaches of Contract Act, 392
MEASURES—
using unlawful weights and, 604
MEDICINE AND SURGERY, 513, 514
MENACES AND THREATS, 514, 516, 601
MILITARY AND NAVAL STORES, 506
MILITIA, 516
MINES, search warrant as to, 72
MINORS AND APPRENTICES, 339
MINUTE OR MEMORANDUM—
of conviction to be made, 176, 188, 189, 190
of order to be served, 197
MISCHIEF—
See Malicious Injuries.
MISCONDUCT BY PUBLIC OFFICERS, 425, 536
MISDEMEANOR, 522
distinction between and felony abolished, 432, 433
justice cannot try, 522
MISPRISION OF FELONY, 383
MURDER—
manslaughter, 526
death within a year and day, 523
what is manslaughter, 525, 526, 527, 529
effect of drinking, 530
attempt to commit, 530
malice in, 526
intention to do what is unlawful, 530
when excusable, 530, 531

N.

NAVIGABLE WATERS, 531
NAVIGATION OF CANADIAN WATERS, 531
NECESSARIES OF LIFE, 532
NEGATIVE—
prosecutor need not prove, 166
NON-FEASANCE by public officers, 425
NORTH-WEST MOUNTED POLICE, 532
NORTH-WEST TERRITORIES, 532



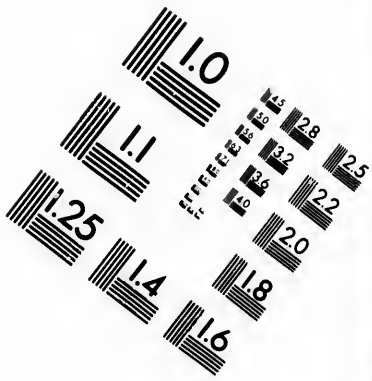
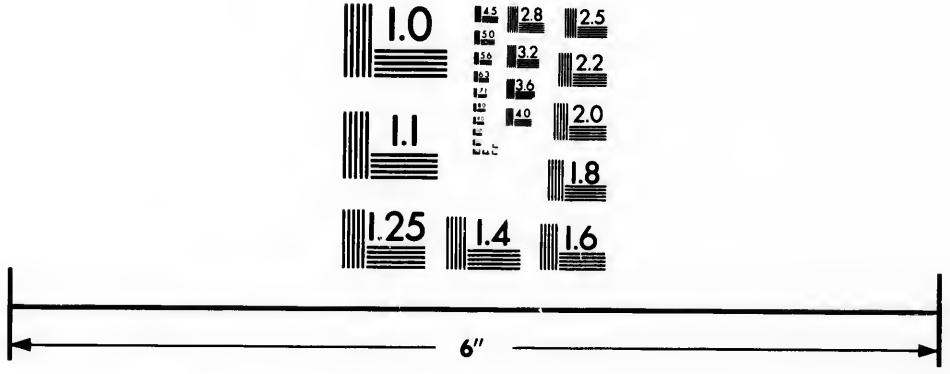
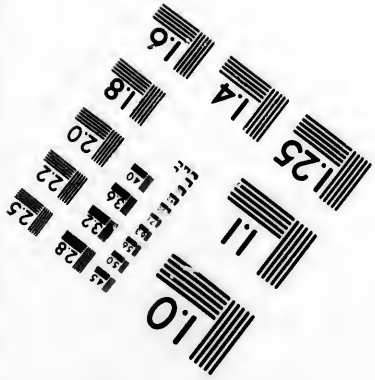
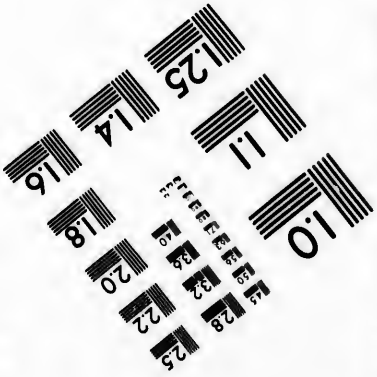


IMAGE EVALUATION
TEST TARGET (MT-3)







Photographic
Sciences
Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

NOTICE—
of action, 322, 331
of appeal, 227, 293
of recognizance, 116, 301

NUISANCES, 532-534

O.

OATH—
complaint need not be made upon, 152
examination of witnesses on, 404
Act for the suppression of voluntary, 534
of justice as to property qualification, 7, 8
of alliegance, 535
power of justice to administer, 165

OBJECTION—
when waived, 61, 62, 76, 159, 162
to information, complaint, warrant or summons, 160, 234

OBSCENE BOOKS, 535, 536
OBSTRUCTING PUBLIC OR PEACE OFFICERS, 536
OFFENCES—
committed on boundaries, 43
place of trial, 43, 50
attempts to commit, 357
compounding, 383

OFFENDERS CAUGHT IN THE ACT—
arrest of, 339, 340

OFFENSIVE WEAPONS. 71
OFFICE—
offences by persons in, 425, 536, 537

OMNIBUS, 375
ONE JUSTICE, powers of. See Justice.
ONTARIO—
procedure under Acts of, 221

ONTARIO FACTORIES' ACT, 537, 539
OPEN COURT—
places where justices take examination not an, in indictable cases, 83
but is in summary cases, 84, 131, 164
See Attorney.

ORDER—
distinction between it and conviction, 155, 597
minute or memorandum, 176, 197
forms of orders, 176
several parts and requisites, 192, 193, 194

ORDER—*Continued.*
of dismissal, 196
minute of order to be served before committal, 197
appeal from, 222, 227
ORDER IN COURT, 33, 36
preservation of, 258

P.

PARTNER, 539
one of several may be convicted, 195
PATENTS, 539
PAWNBROKERS, 539, 540
PAYMENT—
of sum mentioned in warrant of distress, 251, 252
or to keeper of prison, 252
by instalments, 22, 23
PEACE—
on public works, 540
PENALTY—
when several are directed to be paid, 195
need not be fixed at moment of conviction, 24
on justices for non-return of convictions, 232
collecting, by distress, 208
PERJURY, 541
information for, 276
what constitutes the offence, 541
subornation of, 541
two witnesses or corroboration required, 411, 54
must be power to administer oath, 542
PERSON—
stealing from the, 475
PERSONATION, 543, 544
PETROLEUM, 544
PETTY TRESPASS, 544
PILOTAGE, 545
PIRACY, 545
POISON—
administering, 333
POLICE MAGISTRATE, 545
has powers of two justices, 1, 4, 15, 16
POST OFFICE—
offences relating to, 546

PRACTICE—
amending conviction, 184, 185, 238, 239
venue in body of information, 51
PRELIMINARY INQUIRY, 43, 44, 48, 131
procedure on, 83
PREVIOUS CONVICTION, 241, 242, 243, 578
PRINCIPALS AND ACCESSORIES, 308, 312
PRISON, 456, 457, 546
PRISONER—
has a right to counsel, 86, 87
justice to take statement of, 90, 91
PRIZE-FIGHTING, 546
PROCEDENDO, writ of, not necessary, 247
PROCEDURE—
before justices, see various titles,
on appeals to judge of county court in Ontario, from summary convictions, 221
PROCESS, 547
PROCLAMATION, evidence of, 247
PROCURING PROSTITUTION, 547, 548, 549
PROPERTY STOLEN—
detention of, 65
receiving, 555
PROSECUTOR—
costs may be recovered from, in certain cases, 94
may be heard by counsel or attorney, 83
witnesses and, to be bound over by recognizance, 97
may be bound to prefer indictment, 93
PROSTITUTE, 547, 596
See House of Ill-Fame.
PROTECTION—
of justices, 36, 37, 313, 333
PROVISO—
if negatived, need not be proved, 166
PUBLIC HEALTH, 549, 550
PUBLIC LANDS, 550
PUBLIC MORALS, offences against,
See House of Ill-Fame, Vagrancy.
PUBLIC OFFICERS—
offences by, 536
extortion, 425
PUBLIC WORKS—
preservation of peace, on, 540
PUBLIC WORSHIP—
disturbance of, 380

Q.

QUALIFICATION OF JUSTICES—
property qualification, 5, 6, 7
oath as to property qualification, 7
certificate of oath of qualification, 7
penalty on justice for acting without being qualified, 5
QUARTER SESSIONS OF THE PEACE—
See Sessions, 584
QUASHING CONVICTION—
proceedings on, 245, 246, 318

R.

RAILWAYS—
offences relating to, 519, 550, 551
passenger tickets, 552
RAPE, 552, 554
what constitutes the offence, 552, 553
husband cannot commit on wife, 552
attempts to commit, 554
on idiots, 553
RECEIPT to be given by justice or gaoler to constable, 50, 107
RECEIVING STOLEN GOODS, 555, 558
evidence on prosecution for, 422, 556
what constitutes the offence, 556, 557
RECOGNIZANCES, 97, 98, 99, 558
justices to bind over prosecutor and witnesses by, 97
to be subscribed by justices, 97, 99
o be transmitted to the court in which trial is had, 99, 100
transmission of when defendant does not appear, 86
estreating at sessions, 97, 98
n case of distress warrants, 219
discharge of accused on entering into, 85
arrest of person bound by, 98
commitment of witness for refusing to enter into, 99
certificate of non-appearance to be endorsed on, 86, 133, 134, 219
of bail, 100
to prosecute or give evidence, 272
notice of, to accused and his sureties, 85, 86, 98
form of, to try the appeal, etc., 293
form of notice of, to be given to defendants and sureties, 294
on application to quash conviction, 245, 246
of bail instead of remand on adjournment of hearing, 85

RECOGNIZANCES—*Continued.*
where the prosecutor requires the justice to bind him over to prosecute after the charge is dismissed, 93
under Speedy Trials Act, 116
RECORD—
under Speedy Trials Act, 111, 117, 118
RE-HEARING A CASE, 23, 24
REMAND—
warrant of, 267
power of justice to remand the accused, 83, 85, 133
if for three days only, may be by verbal order, 83
accused may be brought up before expiration of, 86
recognizance of bail, instead of, 85, 268
RESCUE OF A PRISONER, 399
RESERVATION OF POINTS OF LAW, 558, 559
RESPONSIBILITY FOR CRIME—
in the case of infants, 464
in the case of women, 385
lunatics, idiots, etc., 465
drunkards responsible for crime, 397
RESTITUTION OF STOLEN PROPERTY, 559, 560
when to be made, 135, 559, 560
RETURN—
of convictions, 252-259, 561
penalty for not making, 252, 254
penalty for receiving more than legal amount of fees, 252
prosecution must be commenced within six months, 257
of convictions, etc., to be published by clerk of peace, 257
under Acts of Ontario, 254, 561
REVENUE—
offences under Acts relating to, 561, 563
REWARD—
corruptly taking, to recover stolen goods, 383
RIGHT—
claim of, 37, 39
RIOTS, ROUTS AND UNLAWFUL ASSEMBLIES, 563, 566
nature of these offences, 563, 566
ROBBERY, 476
assault with intent to commit, 476
ROUTS. See Riots, etc.

S.

SATISFACTION—
discharge of offender on making, 195, 196

SAVINGS BANKS, 566, 567
SCOTT ACT, 567
manner of describing offences, 575, 576
power to enact, 567
must be proof that Act in force, 568
adoption of, 568
punishment for keeping or selling liquor, 569
persons before whom prosecutions brought, 570, 571
laying information before two justices, 572, 573
proceedings according to the Summary Convictions Act, 573, 574
search warrant, 574, 575
destruction of liquors, 575
evidence on prosecutions, 575, 576, 577
appliances of a bar, 576
previous convictions, 577, 578, 579
amendment of variances, 579, 580, 581
certiorari, 581, 582
forms, 583
tampering with a witness, 583
SEAMEN—
provisions for protection of, 583, 584
SEARCH WARRANT, 70-75
in case of deserter, 56
articles seized on may be detained or destroyed, 65, 70, 71
for woman or girl in house of ill-fame, 72
for forged paper, coin, or explosives, 70, 71
in case of gaming or sale of lottery tickets, 73
in relation to mines or timber, 72
for vagrants, 74
may issue on Sunday, 66
information to obtain a, 70, 75
under what circumstance a justice may grant, 70, 75
SECURITY ON MOVING TO QUASH CONVICTION, 245, 246
SEDUCTION, 584
SERVANT. See Larceny
master and, offences by, 337
SERVICE OF SUMMONS—
deposition of constable, 300
must be a reasonable time before return day, 167, 168
SESSIONS—
jurisdiction and powers of, 584, 585
SHEEP, 585
SHERIFF—
cannot be a magistrate, 8, 9
notice to be given by, 111, 120

Shipwrecked Persons, 585

Ships Unseaworthy, 595

Shooting, 585, 586

Shorthand, evidence may be taken in, 86, 87

Slander, 586

Smuggling, 586

Sodomy, 586

Solicitor, cannot be justice, 8

Speedy trials in Certain cases, 108-121
- what judge may act, 110
- notice by sheriff, 111, 120
- procedure in such cases, 110
- forms under the Act, 117

Spirituous Liquors—
- Act in Ontario respecting the sale of, 483
- license must be obtained for the sale of, 484
- cannot be joint conviction for selling without license, 485, 486
- conviction negativing exceptions, 486
- chemist or druggist, 486, 487
- must not be sold on Sunday, 487
- penalties under the Act, 488, 489
- recovery of penalties, 490, 491, 492, 493, 494
- prosecutions procedure on, 491, 492
- procedure in case of previous conviction, 490, 493
- convictions, 495, 496, 497
- evidence on prosecutions, 500
- liability of occupant, 500, 501
- burden of proof of license, 501, 502
- conviction following forms, 498
- certificate as to license, 499
- parties competent witnesses, 499, 500
- attendance and competency of witnesses, 502
- right of search, 502, 503

Statement—
- of the accused, 90, 91

Stating case, 249, 250, 251

Stealing—
- from the person, 475
- See Larceny.

Steamboat Inspection, 586, 587

Stipendiary Magistrate, 2
- may act alone, 103
- has power to preserve order, 34, 258

STOLEN GOODS—
detention of for purposes of evidence, 65
corruptly taking rewards to recover, 383

SUBORNATION OF PERJURY—
what constitutes the offence, 541

SUICIDE, 587

SUMMARY CONVICTIONS—
act respecting, 145
forms in summary cases, 279, 304
appeals in cases of, 220
appeals from under Acts of Ontario, 221
time for proceeding, 146
information or complaint, 147
compelling appearance of accused, 150
procedure in cases of, 150, 170
provisions of Code as to preliminary inquiries apply to, 150

SUMMARY TRIAL OF INDICTABLE OFFENCES, 122, 136
offences so dealt with, 123
punishment on conviction, 129
conviction under Act, 134, 135

SUMMONS, 56
in indictable cases, 56
service of, 56, 57, 60, 80
proof of service of, 58, 60, 61, 300
in what case may issue, 48, 54
how directed, 56
no objection allowed for alleged defect in, 76
if not obeyed warrant may be issued, 59
to a witness, 77, 78, 79
if not obeyed, justice may proceed *ex parte*, 166, 167
cannot be signed in blank, 56, 57
proceeding in the absence of party summoned, 58, 59, 60, 166
issue of may be waived, 61, 62, 162
must be served a reasonable time before appearance, 59, 60, 166, 167, 168

SUNDAY—
warrant may issue on, 66
profanation of, 587, 588
sale of intoxicating liquors prohibited on, 487

SURETIES—
for the peace, 588
form of complaint by party threatened, for, 297
when party may be bound to keep the peace, 588, 591
form of commitment in default of sureties, 299

T.

TAVERNS. See Spirituous Liquors.

TELEGRAM—
how proved, 403

TELEGRAPH—
offences relating to, 591, 592
operator divulging secrets a misdemeanor, 592

TERRITORIAL DIVISION, meaning of, 66

THREATS—
to accuse of a crime, 514

TIMBER, 592

TIME—
for laying information, 18
for payment of fine, 22, 23
for bringing actions, 322
when Code takes effect, 43, 44

TITLE TO LANDS, justices not to try questions as to, 37, 38, 39

TOLLS, 593

TRADE MARKS, 593, 594

TRADER, transient, 375

TRADE UNIONS, 594, 595, 601

TRAINS—
obstructing, 519

TRANSMISSION OF PAPERS, 99
See Recognizance, Deposition, Information.
of evidence on application for bail, 106

TREASON, 595
evidence in cases of, 411

TREES—
Stealing. See Larceny.

TRESPASS—
petty, 544

TRIAL—
committing for, 92, 94
venue abolished, 45, 46
without publicity in case of juveniles, 137
order changing place of must be served, 100

TWO JUSTICES—
when required, 9, 12

TWO OFFENCES—
charges of in an information or complaint, 152, 153, 154, 156, 285

U.

UNLAWFUL ASSEMBLIES, 563-566
UNLAWFULLY DEFILING WOMEN, 595
UNLAWFUL DRILLING, 595
UNSEAWORTHY SHIPS, 595
UTTERING FORGED INSTRUMENTS—
See Forgery.

V.

VAGRANCY, 596, 601
search in case of, 74
who is a vagrant, 596, 597
common prostitutes, 123, 596
conviction must be by police magistrate or two justices, 122, 599
VARIANCE—
between information and evidence, 76, 77
between warrant and evidence, 76, 77
justices may adjourn the case if defendant misled, 76, 77
between information and evidence in cases of summary conviction, 160, 163
the case may be adjourned, 160, 163
between warrant and evidence, etc., 160, 163
VENUE—
law of abolished, 45, 46, 47
VEXATIOUS ACTIONS AGAINST JUSTICES OF THE PEACE, 313, 33
when the matter is within jurisdiction, 314
when justice has exceeded his jurisdiction, 316
conviction or order must be quashed, 318
if a justice refuses to perform his duty, 320
limitation of actions, 322
notice of actions, 322, 331
tender of amends, 331
costs, 332
VIEW, 117
VIOLENCE, threats and intimidation, 601, 602, 603
VOLUNTARY OATHS, 534

W.

WAIVER—
of summons, 61, 62, 162
of information, 61, 62, 76, 159

WAREHOUSEMEN, 603

WARRANT—
to search, 263. See Search Warrant.
issuing of after information, 17
protection of person executing, 63, 150, 151
must not be signed in blank, 62, 63
may be issued on Sunday or holiday, 66
when justice may issue, 48, 54
coroner must issue, 68
to convey before a justice of another county, 50, 259
in case of person charged with offences on sea, 55, 260
to search for deserter, 56
warrant in the first instance in indictable cases, 62, 261
of commitment of a person indicted. 278
when person served does not appear, 59, 62, 63, 80, 262
in indictable cases, 62, 277
on certificate of indictment being found, 95, 96
to detain a person already in gaol, 278
under hand and seal and requisites of, 62
direction of, and who executes same, 62, 63, 64
indorsement or backing of, 66, 67, 151, 152, 289
where it may be executed, 66
objections of substance or form not allowed, 76
on disobedience to summons to witness, 80
requisites of, in summary cases, 150
to apprehend in summary cases, 150, 151
of commitment, 214, 215, 216, 217, 271
of distress, 208, 218
where issuing of, would be ruinous, committal instead. 218
when issued, defendant may be bailed, 219
one justice may issue, 147, 150
where a witness has not obeyed a summons or subpœna, 82, 264, 265
for a witness in the first instance, 265
what constable may execute, 62, 64
to remand a defendant when apprehended, 83, 267
of distress upon conviction for a penalty, 208, 285
upon an order for the payment of money, 208, 286
endorsement in backing a, 218
constable's return to a, 290
of commitment for want of distress, 208, 290, 292
on an order in the first instance, 288
upon a conviction for a penalty in the first instance, 287

WARRANT—*Continued.*

of distress for costs upon an order for dismissal of, 218, 291
of an appeal, etc., 237, 248, 295
of commitment for want of distress for costs of an appeal, 237, 248, 296
when a constable may arrest without a, 339
search warrant, 70, 75
form of information to obtain a, 70, 75
no objection allowed for defect in form or substance, 76, 160
backing a, 289
of deliverance, justice may issue, in certain cases, 106, 107
of commitment of witness for refusing to be sworn or to give evidence, 266
for arrest of person bound by recognizance, 98
of commitment of witness for refusing to enter into a recognizance, 99
of deliverance on bail being given, 275

WEIGHTS AND MEASURES, 604, 605

WIFE—

can give evidence for her husband, 406

WITNESS—

for the accused may be examined, 16, 20, 92
See Evidence.
fees to, 204, 207
summons to, 77, 78, 80, 164
warrant where summons or subpœna is disobeyed, 82, 116, 118
for, in first instance, 81, 82
commitment of, for refusing to be sworn or to give evidence, 83
examination of, 20, 21, 165, 166
mode of taking and signing evidence, 20
procedure to compel attendance of, 80, 81
may be bound to appear by recognizance, 81, 97
when out of province, 82
manner of taking evidence of, 86, 87, 88
for the accused now admissible, 92
may be ordered to leave court, 20, 21
deposition that person is material, 79
may be committed for refusing to enter into recognizance, 99
for defence in indictable cases admissible, 16, 20
in summary cases, 170
bound to criminate himself, 408, 409
competency of, 403, 405, 406, 407
where one is sufficient, 411, 412
where two are required, 411, 412
taking evidence of witness who is ill, 412, 413

WITNESS—*Continued.*

admission of evidence of deceased, 415, 416
evidence of witness who is absent, 415, 416, 417, 418
comparison of writings by, 418, 419
impeaching credit of, 418, 419
securing in case of summary trials, 131
right to examine by counsel, 164
examination when on oath, 165, 166
conviction of, for contempt, 81, 116, 119
summons for witness out of justices jurisdiction, 164
corroboration of evidence of, 409, 410, 411, 412
cross-examination of, as to former statements, 419, 420

WORKMEN—

combinations among, 601

WORSHIP—

disturbance of public, 380

WOUNDING, 605

WRECKS AND SALVAGE, 605