

EX PARTE, WILLIAM SMITHEMAN.

1904

*June 22.

ON APPLICATION, IN CHAMBERS, FOR A WRIT OF
HABEAS CORPUS.*Commitment—Imprisonment in penitentiary—Form of warrant—Venue—
Commencement of sentence.*

The certified copy of sentence is sufficient warrant for the imprisonment of a convict in the penitentiary and it is not necessary that it should contain every essential averment of a formal conviction. Where the venue is mentioned in the margin of a commitment, in the case of an offence which does not require local description, it is not necessary that the warrant should describe the place where the offence was committed.

A warrant of commitment need not state the time from which the term of imprisonment shall begin to run, as, under the seventh subsection of section 955 of the Criminal Code, terms of imprisonment commence on and from the day of the passing of the sentence.

APPLICATION by motion before Davies J., in chambers, for a writ of habeas corpus to inquire into the cause of imprisonment of William Smitheman in the Penitentiary at Dorchester in the Province of New Brunswick, on a conviction by His Honour William B. Wallace, judge of the County Court Judges' Criminal Court in and for the Metropolitan County of Halifax, District No. 1, in the Province of Nova Scotia, under the provisions of part 54 of the Criminal Code, 1892, for the Speedy Trial of Indictable Offences.

The circumstances under which the application was made are stated in the judgment reported.

Power for the application, ex parte.

DAVIES J.—A motion was made before me at chambers for the discharge from custody of the prisoner

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Smitheman, now serving a term of imprisonment in the Penitentiary at Dorchester N.B., for "unlawfully inflicting grievous bodily harm upon Fong Lem." The motion was made pursuant to an order of my brother Killam of the third of June instant setting down for hearing by a judge of this court in chambers a motion for the discharge of Smitheman from custody under a writ of habeas corpus which he ordered to be issued. The grounds upon which Mr. Power sought to sustain his motion were two and were each based upon alleged defects in the warrant of commitment signed by the clerk of the County Court Judges' Criminal Court, at Halifax, N.S., returned by the warden of the Dorchester Penitentiary with the return to the writ of habeas corpus as the authority under which he detained and held Smitheman;—

1. That this warrant did not contain any allegation of *the place* where the prisoner committed the offence for which he was convicted and imprisoned; and
2. That no time was stated in the warrant of commitment from which the imprisonment was to run

With respect to the last objection, it is sufficient to refer to section 955 (7) of the Criminal Code which prescribes that the term of imprisonment in pursuance of any sentence shall, unless otherwise directed in the sentence, commence on and from the day of the passing of the sentence, which day the commitment in question shewed to have been the fifth day of May, 1904.

With regard to the only other objection to the validity of the commitment, namely, the absence of any specific allegation of the place where the offence was committed, it is to be observed that the County Court Judges Criminal Court for the County of Halifax, District No I, when exercising criminal jurisdiction under the provisions of part 54 of the Criminal

Code, intituled, "Speedy Trials of Indictable Offences" is declared, by section 764, to be a court of record, and sub-section two enacts that

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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.

The jurisdiction of this criminal court is, by section 640, made, as regards the place of the commission of the offence, co-extensive with the Province of Nova Scotia and extends, by section 539, over all indictable offences excepting those specially reserved for the exclusive jurisdiction of the superior courts of criminal jurisdiction which do not include the offence of which this prisoner was convicted. As regards "place," therefore, the jurisdiction of the court is not what is known as a limited one.

The general rule, no doubt, with regard to inferior courts is that stated in Paley on Convictions, (5 ed.) p. 204, that

on the ground that the magistrate's jurisdiction is limited in local extent the place where the offence was committed should be stated in the conviction.

But I am not prepared to hold that such rule would necessarily apply to a court having criminal jurisdiction co-extensive, as regards place, with the Supreme Court of the province. The same rule formerly prevailed with regard to the venue in indictments. But now, by section 609 of the Code,

it shall not be necessary to state any venue in the body of the 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.

This is not an offence requiring a local description and, therefore, if the question whether there was or was not a valid conviction in this case was before me, it would become necessary to determine whether this

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section 609 applied to the proceedings in this prosecution. In an ordinary indictment, the absence of the place in the body of the indictment would be immaterial, being covered by that named in the margin. It would be curious, if by a technical limitation of the meaning of the word "indictment" to the proceedings of the Supreme Court of the province, this remedial section of the Code should not be held applicable to the proceedings of the County Court Judge's Criminal Court. Subsection "l" of the Interpretation Act, sec. 3 of the Code, says:—

The expressions "indictment" and "count" respectively include information and presentment as well as indictment and also any plea, replication or other pleading *and any record*.

I think, therefore, that the enactments of the Code are sufficient to meet this case where, even if the place was absent from the body of the record of the conviction, it would be covered by that named in the margin, viz. "County of Halifax".

In this view, I am strengthened by the forms or examples of the manner of stating offences given in the Code. Section 982 declares that these forms shall be deemed good, valid and sufficient in law. The form adopted in the case before me seems to have followed one of the examples given in the Schedule "F.F." to the Code, (f.). See also (M.M.)

But, apart from that, I am not satisfied that the document authorising the prisoner's detention in the penitentiary need necessarily contain every essential averment of a formal conviction. Section 42 of chapter 182 of the Revised Statutes of Canada, prescribes that the sheriff or other officer may convey the convict sentenced to the penitentiary and deliver him to the warden

without any further warrant than a copy of the sentence taken from the minutes of the court before which the convict was tried and certified by a judge or by the clerk or acting clerk of such court.

I would greatly doubt that a "copy of the sentence" must contain all the averments essential to the validity of an indictment or conviction.

This document, certified by the warden as his authority for Smitheman's detention, is sufficient, in my opinion, and the motion for the prisoner's discharge is refused.

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Application refused.
