

1904  
 \*Nov. 29. WILLIAM SMITHEMAN ..... APPELLANT;  
 AND  
 1905  
 \*Jan. 31. HIS MAJESTY THE KING.....RESPONDENT.

ON APPEAL FROM HIS LORDSHIP MR. JUSTICE DAVIES,  
IN CHAMBERS.

*Criminal law—Venue—Indictment—Commitment to penitentiary—Warrant—Criminal Code, 1892, ss. 609, 754—R. S. C. c. 182, s. 42.*

The venue mentioned in section 609 of the Criminal Code, 1892, means the place where the crime is charged to have been committed and, in cases where local description is not required, there is an implied allegation that the offence was committed at the place mentioned in the venue in the margin of the record. It is of no consequence whether or not the trial court should be considered an inferior court.

Under section 42 of "The Penitentiary Act," R. S. C. chap 182, a copy of the sentence of the trial court certified by a judge or by the clerk or acting clerk of that court is a sufficient warrant for the commitment and detention of the convict.

Judgment appealed from (35 Can. S. C. R. 189) affirmed.

APPEAL from the judgment of Mr. Justice Davies, in chambers (1), refusing the application of the appellant for a writ of habeas corpus to inquire into the cause of his imprisonment in the Penitentiary at Dorchester, N.B., on a conviction in a County Court Judges' Criminal Court, under the provisions of Part LIV. of "The Criminal Code, 1892," for the Speedy Trial of Indictable Offences.

The questions raised on the appeal were similar to those raised on the application for the writ of habeas corpus mentioned in the report of the judgment appealed from.

---

\*PRESENT :—Sedgewick, Girouard, Nesbitt and Killam JJ.

(1) 35 Can. S. C. R. 189.

*John J. Power* for the appellant. The forms FF. to the Code are merely examples of the manner of stating offences. See Endlich on Statutes, sec. 71, pp. 91-92. A form given in a schedule, especially if there is no reference to it in the body of the Act, is to be regarded merely as an example. See also the foot note 77, on page 92.

1904  
SMITHEMAN  
v.  
THE KING.

Every element must be stated in an indictment as heretofore required by law. *Smith v. Moody* (1), at page 60-63, *per* Alverstone C.J., and Wills and Channell JJ.

The words "County of Halifax" in the margin must denote either (a) the place where the document was drawn up; 1 Burns's Justices of the Peace (30 ed.) 1113, and *Austin's Case* (2); or (b) the venue as laid down in section 609 of the Code. The venue is intended to shew where the facts were alleged to have occurred and that the court and jury had jurisdiction in the matter. It was formerly necessary to state the venue expressly in the indictment, or by reference to the venue in the margin in every material allegation. Now, by virtue of sec. 609 of the Code [taken from 18 Vict. c. 92, (U.C.) R. S. C. ch. 174, sec. 104, and 14 & 15 Vict. (Imp.) ch. 100, s. 23] it is not necessary to state any venue in the body of any indictment.

Section 651 of the Code relates to procedure only, and does not authorize any order for the change of the place of trial of a prisoner, in any case where any such change would not have been granted under the former practice; it does away with the old practice of removing the case, by certiorari, into the Queen's Bench, and then moving to change the venue. But if the venue be changed, what of the marginal "place" as indicating where the crime was committed.

(1) [1903] 1 K. B. 56.

(2) 8 Mod. 309.

1904  
SMITHEMAN  
v.  
THE KING.

It is submitted, at all events, that the words "any record" referred to in s.s. (1) of sec. 3 of the Criminal Code means "any nisi prius record." See sec. 30 of 14 & 15 Vict. (Imp.) ch. 100. By sub-sec. 3 of sec. 764 of the Code the *record* in any case must be filed in the court. The warrant is a certificate under sec. 42 of the "Penitentiary Act," and is given to the warden of the penitentiary through the officer who carries the prisoner, the act of a ministerial officer; it is not a "record," and therefore, is not covered by sec. 609 and sub-sec. (1) of sec. 3 of the Code.

As to the distinction of courts of general and limited jurisdiction, see the *Lefroy Case* (1), and 8 Am. & Eng. Ency. of Law, (2 ed.) pages 37, 38. Jurisdiction in the County Court Judge's Criminal Court depends on (a) committal for trial or binding over; Code secs. 596, 601, 765; *The King v. Komienksy* (2); (b) certain crimes; sec. 765; or (c) consent of prisoner; secs. 765-767.

We also refer to *Christie v. Unwin* (3), at p. 379; *The Queen v. Slavin* (4); *Ex parte Macdonald* (5); *Case of the Sheriff of Middlesex* (6).

*Longley K.C.*, Attorney General for Nova Scotia, for the Crown. Under the Criminal Code, 1892, and the Dominion statutes respecting the imprisonment of convicts in the penitentiary the warrant in question in this case is a sufficient compliance with the law. I adopt the arguments used in the judgment of His Lordship Mr. Justice Davies in the judgment appealed from. There can be no doubt that the marginal venue is a proper and sufficient allegation of the place where the offence charged was committed.

The judgment of the court was delivered by :

- (1) L. R. 8 Q. B. 134.
- (2) 6 Can. Cr. Cas. 524.
- (3) 11 Ad. & E. 373.

- (4) 35 N. B. Rep. 388.
- (5) 27 Can. S. C. R. 683.
- (6) 11 Ad. & E. 273.

KILLAM J.—We are all of the opinion that this appeal should be dismissed.

By sec. 609 of the Criminal 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.

The word “venue” in this section means the place where the crime is charged to have been committed. See Taschereau's Criminal Code, page 671, and 22 Enc. Pl. & Pr., page 819.

By sec. 764 of the Criminal Code, and R. S. N. S. (1900) c. 157, county court judges' criminal courts are courts of record. The forms of records for these courts given by the Criminal Code, MM and NN, do not state any place of commitment of the offence. By sec. 3, sub-sec. (1), of the Criminal Code, the word “indictment” includes “any record.” The offence of which the appellant was convicted was not one for which local description was required.

The venue in the margin of the record was :

Canada,  
Province of Nova Scotia,  
County of Halifax. }

There was, then, by force of the statute, an implied allegation that the offence was committed in the County of Halifax and the Province of Nova Scotia. This was sufficient to show the jurisdiction of the court, and it is unimportant whether that court should or should not be considered an inferior court.

By the Penitentiary Act, R. S. C. c. 182, sec. 42, the officer conveying a convict to a penitentiary is to deliver him over 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

1905  
SMITHEMAN  
v.  
THE KING.  
Killam J.

1905 court. This was done in the present case and the  
SMITHEMAN copy furnished showed a record in a form which satis-  
v.  
THE KING. fied the statute, and which by virtue of the statute  
Killam J. showed the jurisdiction of the court.

*Appeal dismissed.*

Solicitor for the appellant: *John J. Power.*

Solicitor for the respondent: *J. W. Longley.*

---