IN RE CHARLES SEELEY.

1908
*Oct. 14.
*Oct. 27.

ON APPEAL FROM MR. JUSTICE GIROUARD IN CHAMBERS.

Criminal law—Indictable offence—Summary trial—Jurisdiction of magistrate—Offence committed in another county.

If a person is brought before a justice of the peace charged with an offence committed within the Province, but out of the limits of the jurisdiction of such justice the latter, in his discretion, may either order the accused to be taken before some justice having jurisdiction in the place where the offence was committed (Cr. Code [1892] sec. 557; Cr. C. [1906] sec. 665) or may proceed as if it had been committed within his own jurisdiction.

S. was brought before the stipendiary magistrate of the City of Halifax charged with having committed burglary in Sydney, C.B.

Held, that the stipendiary magistrate could, with the consent of the accused, try him summarily under Cr. C. [1892] sec. 785 as amended in 1900. (Cr. C. [1906] sec. 777).

APPEAL from a decision of Mr. Justice Girouard in Chambers refusing an application for a writ of *habeas corpus.*

The applicant, Seeley, is confined in the penitentiary at Dorchester, N.B., on conviction by a stipendiary magistrate for Halifax, N.S., of having committed burglary at Sydney, Cape Breton. He was at the same time convicted of burglary in Halifax and sentenced to the penitentiary therefor, such sentence to run from the termination of that imposed for the first-mentioned offence.

Seeley applied to a judge of the Supreme Court of New Brunswick for a writ of *habeas corpus,* which

---

*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Davies, Maclennan and Duff JJ.

1908
IN RE SEELEY.

application was referred to the full court and the writ was finally refused(1). He then applied to Mr. Justice Girouard, who, following *In re White*(2), refused to interfere with the decision of the provincial court. He then appealed to the Supreme Court from such refusal.

O'Hearn, for the appellant.
J. J. Power K.C., for the Crown.

The judgment of the court was delivered by

THE CHIEF JUSTICE.—This is an appeal from an order made by Mr. Justice Girouard in Chambers refusing a writ of *habeas corpus*(3).

It may be convenient to state now briefly the mode in which the courts in England have administered the law in relation to the writ of *habeas corpus.* Lord Herschel, in *Cox* v. *Hakes*(4), at page 527, says:

It was always open to an applicant for it, if defeated in one court, at once to *renew* his application to another. No court was bound by the view taken by any other, or felt itself obliged to follow the law laid down by it. Each court exercised its independent judgment upon the case, and determined for itself whether the return to the writ established that the detention of the applicant was in accordance with the law. A person detained in custody might thus proceed *from court to court* until he obtained his liberty. And if he could succeed in convincing any of the tribunals competent to issue the writ that he was entitled to be discharged, his right to his liberty could not afterwards be called in question. There was no power in any court to review or control the proceedings of the tribunal which discharged him. I need not dwell upon the security which was thus afforded against any unlawful imprisonment. It is sufficient to say that *no person* could be detained in custody if any one of the tribunals having power to issue the writ of *habeas corpus* was of opinion that the custody was unlawful.

(1) 13 Can. Cr. Cas. 259.
(2) 31 Can. S.C.R. 383.
(3) Sec. 62 S.C. Act.
(4) 15 App. Cas. 506.

In this statement of the law as applicable to Canada we desire to express our full concurrence.

The facts of this case summarily stated are:

The prisoner was convicted at Halifax on the 23rd December, 1903, by George H. Fielding, stipendiary magistrate in and for the City of Halifax, in the Province of Nova Scotia, of the offence of burglary, alleged to have been committed at the City of Sydney, in the County of Cape Breton, also in Nova Scotia. It is submitted in support of the application that the magistrate had no jurisdiction to convict on the short ground that the offence was not committed within his territorial jurisdiction, the limits of which are made by virtue of the provisions of the Nova Scotia statutes co-terminus with the area of the City of Halifax.

There is no doubt that the powers of a justice of the peace are all derived from statute and being purely statutory must be construed strictly. It must also be conceded, I think, that a magistrate must exercise his powers within the local limits of his jurisdiction. In England, the Criminal Acts (Indictable Offences Act, 1848, and Criminal Law Amendment Act, 1867) empower a justice of the peace to issue a warrant upon information in writing on oath against any person charged with having committed an indictable offence within his jurisdiction, or against any person residing or being or suspected to reside or be within the limits of his jurisdiction and who is suspected to be guilty of having committed any offence elsewhere (11 & 12 Vict. ch. 42, sec. 1); and in the case of a man apprehended in one county for an offence committed in another it is provided that the magistrate shall examine such witnesses and receive such evidence in proof of the charge as shall be pro-

1908
IN RE SEELEY.
The Chief Justice.

duced before him within his jurisdiction, and if, in his opinion, the evidence shall be sufficient proof of the charge he shall commit the accused to the gaol, or house of correction, for the county, borough or place where the offence is alleged to have been committed, or admit to bail; and if the evidence is not deemed sufficient to put the accused upon his trial, the justice binds over the witnesses and sends the accused back to the county where the offence is alleged to have been committed to be dealt with by a justice there (11 & 12 Vict. ch. 42, sec. 22), so that in the result the offence is finally dealt with and the offender tried within the district in which the alleged offence was committed, in accordance with the common law rule. This proceeding is plain, intelligible and consistent with the general principle that the authority of a justice of the peace or of a magistrate is limited to the county or district for which he is appointed.

We must, however, consider this application in connection with sections 554 and 557 of the Criminal Code (Canada, 1892), which re-enact in part only those provisions of the Imperial Act to which I have just referred. Section 554 gives a magistrate jurisdiction to issue his warrant and compel for the purpose of preliminary inquiry the attendance of an accused charged with an indictable offence who resides or is found or apprehended or is in custody in the justice's county. Section 557 provides that the magistrate holding the preliminary inquiry where the accused is charged with an offence committed out of the limits of the jurisdiction of such magistrate may, after hearing both sides, order the accused, at any stage of the inquiry, to be taken before a justice having jurisdiction in the place where the offence was

1908

IN RE SEELEY.

The Chief Justice.

committed. Whereas the "Imperial Act," as already pointed out, is imperative, our section is permissive(1), and makes no special provision for the commitment or trial, as the English Act does, of a prisoner charged with an offence committed in another county *in the same province.* Must we not therefore assume that in such a case, provided the offence is *triable in the province,* the prisoner is to be dealt with as if the offence had been committed within the territorial limits of the magistrate's jurisdiction, unless, in the exercise of his discretion, he chooses to send him before a justice of the county where the offence was committed. I am confirmed in this opinion by the terms of section 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 judge resides, or 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 *preliminary inquiry* in the first paragraph, which specially confer jurisdiction in the cases enumerated in sections (*a*), (*b*), (*c*), (*d*), must carry the same meaning throughout the whole section. It would be contrary to the general rules of construction to give a different meaning to these words in

(1) *Reg.* v. *Burke,* 5 Can. Cr. Cas. 29.

1908
IN RE SEELEY.
The Chief Justice.

different portions of the same section(1), and there is no doubt that construed with special reference to sections (*b*), (*c*) and (*d*), they must be held to confer on the magistrate power to inquire and commit for trial in the cases provided for in these sections, that is to say, where the accused is charged with an offence committed in the justice's county or with unlawfully receiving. I can see no reason why these words should receive a more limited meaning when used in connection with sub-section (*a*) where the accused is charged in the justice's county with an indictable offence committed elsewhere in the province. Article 785 of the Code, as amended by the statute of 1900, (2), gives the magistrate jurisdiction to try summarily with his consent any person *charged* before him with having committed any offence for which he may be tried at a Court of General Sessions of the Peace and undoubtedly the offence of burglary is triable at sessions(3). There are certain offences enumerated in the latter section with respect to which a magistrate can hold a preliminary inquiry only. What is the meaning of the word *charged* as used here? The charge is contained in the information sworn to and lodged with the magistrate and upon which he issues his warrant, as well as in the depositions taken at the preliminary inquiry, if an inquiry is held; but if the prisoner waives the inquiry and consents to be tried summarily, then the magistrate makes the charge for the purpose of that proceeding on the sworn complaint and information then before him and, when read to the prisoner for the purpose

(1) *Ex parte County of Kent & Borough of Dover*, [1891] 1 Q.B. 389, at p. 393.

(2) 63 & 64 Vict., ch. 46.

(3) Secs. 539 and 540.

of enabling him to make his option, he is charged within the meaning of this section and the magistrate has jurisdiction to deal with him. Some stress was laid upon the point that to be clothed with jurisdiction under section 785 the magistrate must be acting within the local limits of his jurisdiction. I have endeavoured to point out that section 554 does not distinguish and that with respect to an offender found within the county charged with an offence committed beyond, but within the province, the jurisdiction of the magistrate is as complete as if the offence had been committed within his territory. The legislation is somewhat elliptical, but our duty is to give effect to what is apparently the intention of the Act if we can do so on a proper construction of the words used. If the Canadian Parliament had intended to adopt the procedure followed in England, it would have been easy to use the language of the "Imperial Act," and as this was not done I conclude that the intention was to establish the principle that mere presence in the county will subject even a passing stranger to the jurisdiction of the magistrate if charged with an indictable offence wherever committed within the limits of the province, and I can see no reason why on the principle of effectiveness and considerations of convenience we should not give effect to what apparently was the intention of the legislature. I construe sections 554, 557 and 785, taken together, to mean that when an offence is committed *within the limits of a province* any presence, however transitory, of the accused in any part of that province will justify the exercise of as full and complete jurisdiction as if the offence was committed where the offender is apprehended, leaving to the magistrate a dis-

1908
IN RE SEELEY.
The Chief Justice.

cretionary power to send the prisoner for further inquiry or for trial before the justice having jurisdiction over the locus where the offence was committed. It has been suggested that difficulty may arise out of the clashing of jurisdiction; but we can only concur in the opinion expressed by Lord Watson in the *Orr-Ewing Case*(1), that wherever a real conflict of jurisdiction does arise between two independant tribunals, the better course for each to pursue is to exercise its own jurisdiction so far as it can and not to issue judgments proclaiming the incompetency of its rival.

Application dismissed.

---

(1) *Ewing* v. *Orr Ewing*, 10 App. Cas. 453, at p. 532.