

see good ground for doing so, might, on granting the *Certiorari*, direct that the Indictment should be tried at the ordinary Circuit Court of the Supreme Court, either with a common or a special jury, providing that the party applying for the *Certiorari*, if he desired to have a special jury, should give due notice to the other side of his intention to apply.

70a. It is to be remarked with respect to the two last paragraphs that the suggestions are not connected with the functions of a Court of Appeal, and that the suggestions contained in them might more properly be carried out in a Supreme Court Bill; but as our attention has necessarily been called to the matter by the surrounding subjects, we consider it proper that we should offer our suggestions upon it at present.

71. In the next place, with respect to convictions and orders of a Penal character removable from inferior tribunals, it would seem advisable to permit the parties, if they agree and the Supreme Court think fit, to have the matter removed directly into the Court of Appeal; but if the case should be removed in the first instance into the Supreme Court, any party deeming himself to be aggrieved, ought to be at liberty to appeal from that Court to the Court of Appeal. It seems unnecessary to notice the "Summary Proceedings Ordinance," or "Summary Proceedings Amendment Ordinance," which gave an appeal to the Supreme Court in case the fine imposed should exceed £5, or the imprisonment adjudged should exceed one month, further than to observe that the "Summary Proceedings Improvement Act, 1860," gives an appeal to the Supreme Court from the determination of one or more Justices of the Peace, upon a case stated and signed by such Justices, in manner therein mentioned, and further provides (sec. 11) that no writ of *certiorari*, or other writ, shall be required for the removal of a conviction, order, or other determination in relation to which a case is stated under the Act, or otherwise for obtaining the judgment of the Court, on such case under the Act, and the appeal given by the above mentioned Ordinance is taken away in cases falling within the last mentioned Act.

Removal of Convictions and General Orders into Court of Appeal.

72. The following clauses seem to us to contain the provisions necessary for carrying out these suggestions.

Proposed Clauses.

1. "When any Bill of Indictment hath been found in the Supreme Court or at a Circuit Court thereof, or any inquisition hath been found, or any criminal information been granted against any person for any crime or misdemeanour; if it shall be made to appear to the Supreme Court on affidavit, on the part of the accused or of the prosecutor, that the case is one of extraordinary importance or difficulty, and that it is desirable that it should be tried before the Judges at bar, the Supreme Court may grant a rule *nisi*, and if no sufficient cause be shown, may make the same absolute for the removal of such Indictment, inquisition, or information, and the proceedings thereon, into the Court of Appeal, and for the trial of the same at Bar at the next or other sitting of such Court of Appeal, and may direct that a Special or Common Jury, as the Supreme Court shall think fit, be summoned from the Province in which the alleged offence was committed or the accused was apprehended, (or from some other Province, if sufficient reason be shewn to the Court), to serve upon such trial; and such proceedings, as nearly as may be, shall thereupon be had as upon a trial at Bar in England; and the said Court of Appeal shall have the same jurisdiction, authority, and power in respect thereof, as the Court of Queen's Bench hath in England in respect of a trial at Bar."

Trial at bar.

2. "When any Bill of Indictment hath been found in the Supreme Court or at a Circuit Court thereof, or any inquisition hath been found, or any criminal information hath been granted to be tried in the Supreme Court or at a Circuit Court thereof, against any person for any misdemeanour, the accused or the prosecutor may, after notice given to the other party, apply on affidavit to the Supreme Court or the Judge presiding in a Circuit Court of the Supreme Court, for an order that such Indictment, inquisition, or information be tried by a Special Jury; and such Court or Judge may, after hearing the objections, if any, of the other party, direct, if it or he think that there are good grounds for so doing, and that it is practicable consistently with the public convenience to do so, that a Special Jury be summoned from the Province in which the alleged offence was committed or the accused was apprehended, (or from some other Province if sufficient reason be shown to the Court) (a) to serve upon the trial, and that the trial take place in the Province from which such Jury shall be summoned, on some day to be specially fixed for such trial by such Court or Judge (b).

Special Jury on Bill found.

3. "The Special Jury directed to be summoned under either of the two last sections shall be struck and summoned in like manner as Special Juries are struck and summoned in civil actions."

Striking, &c., of Special Jury.

NOTES. (a.) Provision is made in these clauses for cases where, on account of political excitement or other good cause, it might be important, either for the sake of the accused or for the interests of public Justice, that the Jury should not be taken from the Province where the fact occurred or the accused resided, but that the trial should take place in and the Jury be summoned from another Province.

(b.) By the provision here introduced, if an indictment should be found at one of the several Circuit Courts, and an application should be made for a Special Jury, which the Court thought fit to grant, directions might be given for summoning the Jury to attend at an adjourned sitting of the same Circuit Court, to suit the convenience of the public and to prevent undue delay detrimental to the accused.

4. "If any indictment information [or inquisition] be removed by *certiorari* from any inferior tribunal (a) into the Supreme Court, it shall be lawful for the Supreme Court, on granting the *certiorari* to order that such indictment, information or inquisition shall be tried either by a special or common Jury as it may think fit."

Special Jury may be granted on granting *Certiorari*.