

**A TREATISE ON THE LAW AND PRACTICE ON
SUMMARY CONVICTIONS AND ORDERS BY
JUSTICES OF THE PEACE IN UPPER AND LOWER
CANADA; WITH NUMEROUS REFERENCES TO
ENGLISH DECISIONS AND JUDGMENTS OF THE
SUPERIOR COURT, AND ON THE REMEDY BY
APPEAL AND CERTIORARI**

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A Treatise on the Law and Practice on Summary Convictions and Orders by Justices of the Peace in Upper and Lower Canada; With Numerous References to English Decisions and Judgments of the Superior Court, and on the Remedy by Appeal and Certiorari by Edward Carter

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EDWARD CARTER

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COURT,
AND ON THE REMEDY BY
APPEAL AND CERTIORARI;
TOGETHER WITH
PRACTICAL FORMS.

BY EDWARD CARTER,
BARRISTER AT LAW.

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TO THE
HONORABLE THOMAS CUSHING AYLWIN,
ONE OF THE JUSTICES
OF
HER MAJESTY'S COURT OF QUEEN'S BENCH
FOR
LOWER CANADA,

This Treatise,

IS,
WITH HIS KIND PERMISSION,
MOST RESPECTFULLY DEDICATED

BY
HIS FORMER STUDENT,
AND VERY OBEDIENT

HUMBLE SERVANT,

THE AUTHOR.

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PREFACE.

THE duties imposed upon Justices of the Peace by the various Statutes in force in this Province have rendered their due performance a matter of extreme importance to the community at large. The benefit arising from the exercise of the Summary Jurisdiction of Justices, in those matters which the Legislature has confided to them, is incalculable, if the law be judiciously carried out; while, on the other hand, the power so conferred may become the instrument of the greatest evil and oppression society could be inflicted with, if wielded by men incompetent for that office, or ignorant of the elementary principles which should guide them in the discharge of their duties.

In England this office is seldom conferred upon those whose education does not enable them to acquire a sufficient knowledge of the principles of law by which they are to be guided, or who have not the means of providing such professional assistance as they may require. In this Province, on the contrary, the appointments to that

office have, in a great many cases, been unavoidably made from a class of men whose education and whose opportunities for improvement but little fitted them for the proper discharge of their duties.

It may, however, be said that the system is but in its infancy here, as compared with the progress and perfection it has attained in England; but even there, it was not until within the last few years that it was brought to any thing like a practical and uniform system. For centuries many points affecting proceedings before Justices were involved in doubt, from the contrariety of opinions amongst authors, and contradictory decisions of Judges; the forms of proceedings adopted were so multifarious that nothing like uniformity existed, and it was reserved for the Attorney General, Sir John Jervis, to render his name renowned in the annals of jurisprudence, by the introduction of a simple and precise Code of Law and Practice, accompanied by Forms, for the guidance of Justices in the discharge of their duties. It is said by Archbold, and other writers on Sir John Jervis' Acts,—11 and 12 Vict., ch. 42—as to Indictable Offences, 11 and 12 Vict., ch. 43—as to Convictions and Orders, 11 and 12 Vict., ch. 44—as to the protection of Magistrates, that he (Sir John Jervis) has, by these Acts, done more for the due administration of criminal justice throughout England than had ever yet been done by any person.

In this Province, more especially in Lower Canada, greater confusion and doubt prevailed, from the common error committed by Magistrates, of imagining that they were Judges possessing the same attributes and powers exercised by other Judges, and mixing up in the execution of their duties, the law and forms of proceedings in civil

cases. In the midst of all this confusion, Justices have had, however desirous they may have been of properly discharging their duties, but few opportunities of instruction to enable them so to do. The necessity of supplying that want has been seriously felt, and of late years satisfactorily shewn, from the circumstance that in the District of Montreal alone, out of the number of convictions removed by *Certiorari* to the Superior Court, averaging over 100 in a year, scarcely ten of that number have been sustained.

The Author having entertained the idea of writing on this branch of the law, and encouraged so to do by many of his fellow practitioners and friends, has been induced to write this work, for the guidance of Justices. Numerous references to authorities and English decisions are given, which, in so far as Justices are concerned, may be considered unnecessary; but the Author will not regret the labor he has bestowed in the collection and proper application of them, should he obtain for his work the favourable opinion and consideration of his fellow practitioners, to whom it may be serviceable as a book of reference.

The Author's first intention was to confine the work, in its application, to Lower Canada only, but he has recently altered the design of it, by adapting it to both sections of the Province, and where any difference in the law of either existed he has endeavoured to demonstrate it. He feels, however, that as respects Upper Canada he has, from his not being experienced in the practice which there prevails, need of indulgence from the professional reader. This work may not, however, prove unserviceable in Upper Canada, as the important Statute 11 and 12