1964

*Dec. 10, 11, 14

1965

Jan. 26

DOUGLAS GORDON ..... APPELLANT;

AND

HER MAJESTY THE QUEEN ..... RESPONDENT.

APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Criminal law—Habitual criminal—Notice of application to have accused given preventive detention "in addition to" sentence for substantive offence—Whether notice defective to the extent of nullity—Criminal Code, 1953-54 (Can.), c. 51, ss. 660(1), 662(1)(a), 667.

Criminal law—Habitual criminal—Procedure—County Court Judges' Criminal Court—Application for sentence of preventive detention—Application traversed to next sittings of Court in January—Application finally heard in June—No adjournments meanwhile—Whether proceedings had come to an end because of postponements and delay—Whether County Court Judges' Criminal Court a continuing Court.

The appellant was convicted in February 1962 on a charge of trafficking in drugs and was sentenced to ten years imprisonment. While his appeal was pending he was served in May 1962 with an application asking the Court to impose a sentence of preventive detention "in addition to" the sentence imposed on the ground that he was a habitual criminal. His appeal on the substantive offence was dismissed and this Court refused to grant leave to appeal in October 1962. In December 1962, the Crown's request to have the application for preventive detention traversed to the next Court of competent jurisdiction was granted. Because of lack of accommodation at the Court house, the application was not heard until June 1963 despite repeated efforts of Crown counsel to have it heard sooner. The application was quashed by a judge of the County Court Judges' Criminal Court on the grounds that the notice was defective to the extent of nullity and that the application had expired when it was not dealt with in January. The Court of Appeal held that the application could be amended and that the County Court Judges' Criminal Court was a continuing Court and adjournments from time to time were not necessary to keep the application alive. The application was ordered remitted to a judge of the County Court Judges' Criminal Court. The accused was granted leave to appeal to this Court.

Held (Cartwright J. dissenting): The appeal should be dismissed.

Per Taschereau C.J. and Fauteux, Judson and Spence JJ.: Section 660(1) of the *Criminal Code*, as amended by 1960-61 (Can.), c. 43, s. 33(1), leaves no room for doubt that the only sentence of preventive detention which could be imposed is "in lieu of" any other sentence, not "in addition to". The essence of the notice is that a sentence of preventive detention would be sought. This could only be under the existing law. The error in the notice was contained in something that was superfluous. The nullity was to be found in the error and not in the essential function of the notice. There was no need to amend the notice. The contention that the notice was given under a repealed section of the Code could not be accepted.

*PRESENT: Taschereau C.J. and Cartwright, Fauteux, Judson and Spence JJ.

The application had not come to an end because of repeated postponements and delay. The delays were justified in this case. The County Court Judges' Criminal Court is a continuing Court before which the application was pending until it was heard.

The fact that an accused may have unsuccessfully appealed against the sentence imposed upon him for a substantive offence could not operate as a bar to proceeding against him as a habitual criminal.

Although the Court of Appeal had power under s. 667(2)(*b*) of the Code to impose a sentence of preventive detention, it could not take such action because the application had not been heard. It could, in these circumstances, only say that the quashing of the notice was erroneous.

Per Cartwright J., *dissenting:* The notice served upon the appellant was fatally defective. The argument that the notice was sufficient and that the words "in addition to" were mere surplusage, could not be accepted. A notice that the Court will be asked to do something which is clearly illegal and beyond its powers could not form a valid foundation for a criminal proceeding of the most serious sort, in which it is sought to deprive a man of his liberty for the rest of his life. The amendment ordered by the Court of Appeal was ineffective as it was not made until long after the period of three months fixed by the s. 662 had expired. It has long been the settled policy of English criminal law that as against a prisoner every rule in his favour must be observed.

Droit criminel—Repris de justice—Avis de demande pour imposer à l'accusé une sentence de détention préventive «en plus de» la sentence imposée pour l'offense originale—L'avis était-il défectueux jusqu'au point de nullité—Code criminel, 1953-54 (Can.), c. 51, arts. 660(1), 662(1)(a), 667.

Droit criminel—Repris de justice—Procédure—County Court Judges' Criminal Court—Demande pour imposer une sentence de détention préventive—Demande remise à la session suivante de la Cour en janvier—Demande finalement entendue en juin—Aucun ajournement durant cette période—Est-ce que les procédures avaient pris fin à cause de ces retards et délais—Est-ce que la County Court Judges' Criminal Court est une Cour continuelle.

L'appelant fut trouvé coupable en février 1962 d'avoir fait le trafic de stupéfiants et a été condamné à dix ans d'emprisonnement. Alors que son appel était devant la Cour d'Appel, il reçut signification en mai 1962 d'une demande demandant à la Cour d'imposer une sentence de détention préventive «en plus de» la sentence déjà imposée pour le motif qu'il était un repris de justice. Son appel contre le verdict pour l'offense originale fut rejeté et cette Cour refusa permission d'appeler en octobre 1962. La Couronne fit application en décembre 1962 pour remettre la demande de détention préventive à la prochaine Cour de juridiction compétente. Cette demande fut accordée. Dû à un manque d'aménagement au palais de justice, la demande ne fut pas entendue avant le 6 de juin 1963 malgré les efforts du procureur de la Couronne pour qu'elle soit entendue plus tôt. La demande fut rejetée par le juge de la *County Court Judges' Criminal Court* pour le motif que l'avis était défectueux jusqu'au point de nullité et que la demande avait

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expiré lorsqu'elle n'avait pas été entendue au mois de janvier. La Cour d'Appel jugea que la demande pouvait être amendée et que la *County Court Judges' Criminal Court* était une Cour continuelle et que des ajournements de temps à autre n'étaient pas nécessaires pour que la demande demeure active. Il fut alors ordonné que la demande soit retournée à un juge de la *County Court Judges' Criminal Court*. L'appelant obtint permission d'appeler devant cette Cour.

Arrêt: L'appel doit être rejeté, le Juge Cartwright étant dissident.

Le Juge en Chef Taschereau et les Juges Fauteux, Judson et Spence: L'article 660(1) du *Code criminel*, tel qu'amendé par 1960-61 (Can.), c. 43, art. 33(1), ne laisse aucun doute que la seule sentence de détention préventive qui peut être imposée est une «au lieu de» toute autre sentence, et non «en plus de». Qu'une sentence de détention préventive serait recherchée, telle était la qualité substantielle de l'avis. Ceci ne pouvait avoir lieu que sous le régime de la loi alors existante. L'erreur dans l'avis était contenue dans quelque chose qui était superflu. La nullité portait sur l'erreur et non sur la fonction essentielle de l'avis. L'avis n'avait pas besoin d'être amendé. La proposition que l'avis avait été donné sous un article du Code abrogé ne peut pas être acceptée.

Les retards et délais n'avaient pas mis fin à la demande; les délais étaient justifiés dans l'espèce. La *County Court Judges' Criminal Court* est une Cour continuelle devant laquelle la demande était en souffrance jusqu'à ce qu'elle soit entendue. Le fait que l'accusé pouvait avoir appelé sans succès de la sentence imposée pour l'offense originale ne pouvait servir en fin de non-recevoir contre la poursuite prise contre lui comme repris de justice.

Quoique la Cour d'Appel avait le pouvoir en vertu de l'art. 667(2)(*b*) du Code d'imposer une sentence de détention préventive, elle ne pouvait le faire parce que la demande n'avait pas été entendue. Tout ce que la Cour pouvait faire, dans les circonstances, était de déclarer que le rejet de l'avis était erroné.

Le Juge Cartwright, dissident: L'avis qui a été signifié à l'appelant était fatalement défectueux. L'argument que l'avis était suffisant et que les mots «en plus de» étaient simplement du surplus, ne peut pas être accepté. Un avis que la Cour sera requise de faire quelque chose qui est clairement illégal et au-delà de ses pouvoirs ne peut pas former un fondement valide pour une poursuite criminelle de la plus sérieuse nature, dans laquelle on cherche à supprimer la liberté d'un homme pour le reste de sa vie. L'amendement ordonné par la Cour d'Appel est inefficace parce qu'il n'a été fait que longtemps après l'expiration de la période de trois mois fixée par l'art. 662. Dans le droit criminel anglais la ligne de conduite qui est établie depuis longtemps est à l'effet que toutes les règles en faveur du prisonnier doivent être observées.

APPEL d'un jugement de la Cour d'Appel de l'Ontario, renversant une décision du Juge de comté Rogers qui avait rejeté une demande pour sentence de détention préventive sous l'art. 660 du *Code criminel*. Appel rejeté, le Juge Cartwright étant dissident.

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APPEAL from a judgment of the Court of Appeal for Ontario[1], reversing an order of Rogers, Co. Ct. J., quashing an application for sentence of preventive detention under s. 660 of the *Criminal Code*. Appeal dismissed, Cartwright J. dissenting.

Miss Vera L. Parsons, Q.C., for the appellant.

D. H. Christie, Q.C., and *J. H. Buntain*, for the respondent.

The judgement of Taschereau C.J. and Fauteux, Judson and Spence JJ. was delivered by

JUDSON J.:—After the accused had been found guilty of trafficking in drugs contrary to s. 4(3)(*a*) of the *Opium and Narcotic Drug Act*, R.S.C. 1952, c. 201, the Crown took proceedings against him as an habitual criminal. This application was quashed by a Judge of the County Court Judges' Criminal Court for the County of York for two reasons: first, that the notice was defective to the extent of nullity, and second, that the proceedings had come to an end because of delay. On appeal to the Court of Appeal[1] both these reasons were rejected and the matter was remitted to a Judge of the same Court for enquiry and disposal. Leave to appeal was granted to this Court. In my opinion the appeal fails.

The grounds of appeal make it necessary to set out in some detail the proceedings that were taken against the accused. He was convicted on February 14, 1962, on the charge of trafficking and sentenced to ten years' imprisonment. His appeal against conviction and sentence was heard and dismissed on June 20, 1962. An application for leave to appeal to this Court was dismissed on October 2, 1962. This ended the proceedings for the offence itself.

In the meantime, on May 8, 1962, the Crown served the appellant with notice of intention to seek a sentence of preventive detention against him as an habitual criminal. On June 5, 1963, the appellant filed a notice of motion to quash the application. It was this motion which was granted on June 20, 1963.

On July 17, 1963, the Crown prepared a notice of appeal to the Ontario Court of Appeal from the order quashing

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the application. Time for service of this notice was extended by ex parte order made by Mr. Justice Hughes on July 24, 1963. It was served and filed on July 25, 1963. This appeal was heard in February, 1964, and judgment was given in March, 1964, referring the matter back to the County Court Judges' Criminal Court. Leave to appeal was granted to this Court in April 1964.

The main ground of appeal is that the notice of application, dated May 8, 1962, to have the appellant declared an habitual criminal, was a nullity because it asked for a sentence of preventive detention in addition to the sentence of 10 years. By s. 660(1) of the *Criminal Code,* enacted by 1960-61 (Can.), c. 43, s. 33(1), the only sentence of preventive detention which could be imposed in the circumstances of this case was one in lieu of the sentence that had been imposed. The statute leaves no room for doubt on this point. It reads:

> 660. (1) Where an accused has been convicted of an indictable offence the court may, upon application, impose a sentence of preventive detention in lieu of any other sentence that might be imposed for the offence of which he was convicted or that was imposed for such offence, or in addition to any sentence that was imposed for such offence if the sentence has expired, if
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> (*a*) the accused is found to be an habitual criminal, and
>
> (*b*) the court is of the opinion that because the accused is an habitual criminal, it is expedient for the protection of the public to sentence him to preventive detention.

The former law embodied in the 1953-1954 statute was that the sentence of preventive detention would be in addition to any sentence that had been imposed. From this it is argued that the notice of application was given under a repealed statute and was therefore a nullity.

I agree with the Court of Appeal that the essence of the notice is that a sentence of preventive detention will be sought. This could only be under the existing law. The error in the notice is contained in something that is superfluous. The nullity is to be found in the error not in the essential function of the notice. I do not think there was any need to amend by substituting "in lieu of" for "in addition to".

These proceedings were authorized by the Attorney General in these terms:

> Pursuant to section 662(1)(*a*)(1) of the Criminal Code, I consent to an application being made to have a sentence of preventive detention imposed upon Douglas Gordon.

The consent itself is attacked on the ground that it cannot be applicable to a notice given under a repealed section of the *Criminal Code*. This objection presupposes the correctness of the first submission. What the Attorney General was consenting to was an application under the Code as it stood at the date of the consent.

All that the Crown's notice needed to say was that a sentence of preventive detention would be sought against the appellant. The Code would then have spoken. The appellant's sentence had not expired. Therefore, the sentence of preventive detention could only be imposed in lieu of the 10 year sentence that he was already serving. There could be no ambiguity or doubt about the situation. The words "in addition to the sentence of 10 years" which appear in the notice are, on the face of them, erroneous. But this does not mean that the Crown was seeking this sentence under the provisions of a repealed section of the Code or that the notice was given pursuant to a repealed section.

The other ground on which the application was quashed in the County Court Judges' Criminal Court was that because of the repeated postponements and delay, the application, even if it were ever a valid one, had come to an end.

First of all, nothing could be done with this application until this Court had dismissed on October 2, 1962, the application for leave to appeal from the original conviction. The notice had been served on May 8, 1962. On December 10, 1962, counsel for the Attorney General of Canada asked that the application for preventive detention be traversed to the next Court of competent jurisdiction. This request was granted, counsel for the accused neither objecting nor consenting. Because of lack of accommodation at the Courthouse, the application was not heard in the spring of 1963 despite repeated efforts of Crown counsel to have it heard. It finally came on on June 20, 1963, when it was quashed. The second of the reasons given by the learned trial judge was that he was deprived of jurisdiction because the matter had not been dealt with by the County Court Judges' Criminal Court for the County of York in January, 1963, and that consequently, the application had expired. I agree with the Court of Appeal that the County Court Judges'

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Criminal Court is a continuing Court before which this application was pending until it was heard and that any reference to this Court in an unofficial guide as holding weekly sittings does not affect the question.

Up to this point I have dealt with the first four grounds on which leave to appeal was sought. The fifth ground is that there could not be an application for preventive detention because the original conviction and sentence had been appealed to the Court of Appeal and confirmed by that Court. Therefore, no County Court Judge sitting in the County Court Judges' Criminal Court could do anything which would in any way modify what the Court of Appeal had done. This argument is contrary to the express provisions of s. 660. The fact that an accused may have unsuccessfully appealed against the sentence imposed upon him for the substantive offence cannot operate as a bar to proceeding against him as an habitual criminal.

The sixth ground of appeal has to do with the powers of the Court of Appeal under Part XXI dealing with preventive detention. Section 667 provides:

> 667. (1) A person who is sentenced to preventive detention under this Part may appeal to the court of appeal against that sentence on any ground of law or fact or mixed law and fact.
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> (2) The Attorney General may appeal to the court of appeal against the dismissal of an application for an order under this Part on any ground of law.
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> (2*a*) On an appeal against a sentence of preventive detention the court of appeal may
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> (*a*) quash such sentence and impose any sentence that might have been imposed in respect of the offence for which the appellant was convicted, or
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> (*b*) dismiss the appeal.
>
> (2*b*) On an appeal against the dismissal of an application for an order under this Part the court of appeal may
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> (*a*) allow the appeal, set aside any sentence imposed in respect of the offence for which the respondent was convicted and impose a sentence of preventive detention, or
>
> (*b*) dismiss the appeal.

In this case the County Court Judge quashed the notice of application. He took no evidence and did not embark upon any enquiry under s. 660. The Court of Appeal, although it has power under s. 667(2)(*b*) to impose a sentence of preventive detention, could not take any such action because the case had not been heard. It could, in the circumstances, only say that the quashing of the notice

was erroneous. The consequence was that there was still an application pending before the County Court Judges' Criminal Court. The order of the Court of Appeal simply tells this Court to proceed with the hearing.

The remaining grounds of appeal are concerned with technicalities. They were fully argued and I repeat them merely for the purpose of stating that I have considered and rejected them as having no merit. The remission of the matter to the County Court does not result in a new application which is out of time under s. 662(1)(*a*)(ii). The notice of application signed by the Special Crown Prosecutor was in order. It was addressed to the appellant and its validity is not affected by the fact that it is not headed "Her Majesty The Queen, Applicant and Douglas Gordon, Respondent." Mr. Justice Hughes had jurisdiction to make the order of July 24, 1963, extending the time for service of the notice of appeal to the Court of Appeal.

I would dismiss the appeal.

CARTWRIGHT J. (*dissenting*):—This appeal is brought, pursuant to leave granted by this Court, from a judgment of the Court of Appeal for Ontario[1] which allowed an appeal by the Attorney General of Canada from an order of His Honour Judge Rogers quashing an application for the imposition of a sentence of preventive detention upon the present appellant. The Court of Appeal ordered that the notice which had been served upon the appellant be amended and that the application for the imposition of a sentence of preventive detention be remitted to a Judge of the County Court Judges Criminal Court of the County of York for inquiry and disposal.

There is no dispute as to the facts which are relevant to the determination of this appeal.

The appellant was convicted at Toronto on February 14, 1962, before His Honour Judge Forsyth and a jury on a charge of trafficking in drugs contrary to s. 4(3) (*a*) of the *Opium and Narcotic Drug Act,* R.S.C. 1952, c. 201. On February 16, 1962, he was sentenced to 10 years' imprisonment. By Notice of Appeal dated March 7, 1962, he appealed against his conviction and sentence to the Court of Appeal.

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This appeal was heard and dismissed on June 20, 1962. An application for leave to appeal to this Court was dismissed on October 2, 1962.

On May 8, 1962, the appellant was served with a notice of intention to ask that a sentence of preventive detention be imposed upon him on the ground that he is a habitual criminal. On June 5, 1963, the appellant filed a notice of motion to quash the application. This motion was allowed by His Honour Judge Rogers on June 20, 1963.

On July 17, 1963, the Attorney General for Canada prepared a notice of appeal to the Court of Appeal from the order of His Honour Judge Rogers. On July 24, 1963, Hughes J., on an *ex parte* application, extended the time for serving and filing the notice until July 29, 1963. The notice was served and filed on July 25, 1963. The appeal came on for hearing before the Court of Appeal on February 24 and 25, 1964. Judgment was reserved until March 10, 1964, when the appeal was allowed. Leave to appeal to this Court was granted pursuant to s. 41 of the *Supreme Court Act,* on April 28, 1964.

A number of grounds in support of the appeal to this Court were fully argued but I find it necessary to deal with only one of them, which is that the notice, dated May 8, 1962, served upon the appellant was fatally defective.

The notice, dated and served May 8, 1962, recited the conviction of the appellant before His Honour Judge Forsyth, his sentence to ten years' imprisonment and the giving of consent by the Attorney General of Ontario to the making of the application for the imposition of a sentence of preventive detention and continued:

> TAKE NOTICE, THEREFORE, that having been convicted on the aforesaid charge under Section 4(3)(*a*) of *The Opium and Narcotic Drug Act,* Revised Statutes of Canada 1952, Chapter 201 and amendments thereto, of unlawfully trafficking in a drug, to wit Diacetylmorphine, that an application will be made on June 11, 1962, before the Presiding Judge in the County Court Judge's Criminal Court for the County of York, at the City Hall, Toronto, at 10.00 o'clock in the forenoon to impose upon you a sentence of preventive detention, in addition to the sentence of ten years imposed by His Honour Judge Forsyth on February 16, 1962, on the ground that you are an habitual criminal and that because you are an habitual criminal it is expedient for the protection of the public to sentence you to such preventive detention.

The relevant provisions of the *Criminal Code* conferring jurisdiction on the County Court Judge to hear and determine the application and prescribing the procedure to be followed are s.660(1) and s.662(1) (*a*). These read as follows:

660(1) Where an accused has been convicted of an indictable offence the court may, upon application, impose a sentence of preventive detention in lieu of any other sentence that might be imposed for the offence of which he was convicted or that was imposed for such offence, or in addition to any sentence that was imposed for such offence if the sentence has expired, if

(*a*) the accused is found to be an habitual criminal, and

(*b*) the court is of the opinion that because the accused is an habitual criminal, it is expedient for the protection of the public to sentence him to preventive detention.

662(1) The following provisions apply with respect to applications under this Part, namely,

(*a*) an application under subsection (1) of section 660 shall not be heard unless

(i) the Attorney General of the province in which the accused is to be tried consents,

(ii) seven clear days' notice has been given to the accused by the prosecutor, either before or after conviction or sentence but within three months after the passing of sentence and before the sentence has expired, specifying the previous convictions and the other circumstances, if any, upon which it is intended to found the application, and

(iii) a copy of the notice has been filed with the clerk of the court or the magistrate, as the case may be;

Section 660(1) in its present form was enacted by Statutes of Canada 1960-1961, c.43 and came into force on September 1, 1961. Prior thereto that part of the subsection preceding paragraph (*a*) had read as follows:

660(1) Where an accused is convicted of an indictable offence the court may, upon application, impose a sentence of preventive detention in addition to any sentence that is imposed for the offence of which he is convicted if

The amendment made in 1961 brought about a substantial change in the law. Prior thereto a sentence of preventive detention commenced immediately upon the determination of the sentence imposed for the substantive offence; since the amendment it takes the place of the last mentioned sentence.

It appears therefore that the notice served upon the appellant stated that the Judge before whom the application would come was to be asked to do something which

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he had no power to do and which was contrary to law. It is argued for the appellant that this is a defect in substance and is fatal to the Attorney General's application.

It is clear from the wording of s. 662(1)(*a*), quoted above, that the giving of a sufficient notice within three months after the passing of sentence is a condition precedent to the hearing of the application. This is not disputed; but counsel for the respondent argues that the notice given was sufficient and that the words "in addition to the sentence of ten years imposed by His Honour Judge Forsyth on February 16, 1962" can and should be regarded as mere surplusage. This argument found favour with the Court of Appeal but I am unable to accept it.

The question is whether the notice, when it was served, constituted a sufficient compliance with the statutory condition precedent prescribed by s. 662. If it did not the amendment ordered by the Court of Appeal would be ineffective as it was not made until long after the period of three months fixed by the section had expired.

No special form of notice is required by the section but I have reached the conclusion that a notice that the Court will be asked to do that which is clearly illegal and beyond its powers cannot form a valid foundation for a criminal proceeding of the most serious sort, in which it is sought to deprive a man of his liberty for the rest of his life.

It is said, on behalf of the respondent, that no real prejudice has been caused to the appellant but it has long been the settled policy of English criminal law that as against the prisoner every rule in his favour is observed.

In *R. v. Triffitt*[1], the Court of Criminal Appeal quashed a finding that the appellant was a habitual criminal because of an irregularity of procedure although, in the words of Humphreys J. who gave the unanimous judgment of the Court, "the appeal has otherwise no merits whatsoever".

In *Parkes v. The Queen*[2], this Court set aside a finding that the appellant was a habitual criminal. At pages 773 and 774, Rand J. said:

> There seems to be a tendency to treat a proceeding under the section as one in which strict compliance with the express requirements of the Code is not to be insisted on. That is altogether a mistake. Under such a determination a person can be detained in prison for the rest of his life with

[1] (1938), 26 Cr. App. Rep. 169, 2 All E.R. 818.
[2] [1956] S.C.R. 768, 24 C.R. 279, 116 C.C.C. 86, 6 D.L.R. (2d) 449.

his liberty dependent on the favourable discretion of a minister of the Crown. The adjudication is a most serious step in the administration of the criminal law in relation to which it is well to recall the words of the Lord Chief Justice of England in *Martin v. Mackonochie* (1878) 3 Q.B.D. 730 at 775-6.

> It seems to me, I must say, a strange argument in a court of justice, to say that when, as the law stands, formal proceedings are in strict law required, yet if no substantial injustice has been done by dealing summarily with a defendant, the proceeding should be upheld. In a court of law such an argument à convenienti is surely inadmissible. In a criminal proceeding the question is not alone whether substantial justice has been done, but whether justice has been done according to law. All proceedings in poenam are it need scarcely be observed, strictissimi juris; nor should it be forgotten that the formalities of law, though here and there they may lead to the escape of an offender, are intended on the whole to insure the safe administration of justice and the protection of innocence, and must be observed. A party accused has the right to insist upon them as a matter of right, of which he cannot be deprived against his will; and the judge must see that they are followed. He cannot set himself above the law which he has to administer, or make or mould it to suit the exigencies of a particular occasion. Though a murderer should be taken red-handed in the act, if there is a flaw in the indictment the criminal must have the benefit of it. If the law is imperfect, it is for the legislature to amend. The judge must administer it as he finds it. And the procedure by which an offender is to be tried, though but ancillary to the application of the substantive law and to the ends of justice, is as much part of the law as the substantive law itself.

Having reached the conclusion, for the reasons stated above, that the notice served upon the accused was fatally defective, it becomes unnecessary for me to examine the other grounds in support of the appeal which were argued before us.

I would allow the appeal, set aside the judgment of the Court of Appeal and restore that of His Honour Judge Rogers quashing the application for the imposition of a sentence of preventive detention.

Appeal dismissed, CARTWRIGHT J. *dissenting.*

Solicitors for the appellant: Graham, Parsons & Liscombe, Toronto.

Solicitor for the respondent: T.D. MacDonald, Ottawa.