were examined and the case remanded until the 14th May; then there appears an entry dated 19th May, that Mason was committed for trial to the next court; then follow other depositions of witnesses apparently for the defence, and sworn on the 18th May.

The only affidavit filed on shewing cause is that of Mr. Nudel, clerk of the police court, in which he states that Mason was committed for trial on the 19th May; that a warrant of commitment was signed and sealed, but not delivered to the gaoler, as there was a counter charge made by Mason against Nichol, in which Mason was a necessary witness; that on the 11th June, Nichol was convicted of an assault on Mason, on Mason's testimony, and that the warrant of commitment against Mason was on that day, to the best of the clerk's recollection, given to a police officer, and that he never saw it since; that during last week (since this application) he procured a duplicate warrant of commitment to be executed by the police magistrate, and placed it in the hands of the gaoler. No affidavit is filed by Mason with respect to the putting in bail, or as to the existence of the sureties, nor any statement made by the police magistrate. On the return of the summons the County Attorney appeared and made a satisfactory statement as far as he was concerned, and the case was argued at length by *R. A. Harrison*, Q.C., for Mason, and *McKenzie*, Q.C., for the private prosecutor, and on behalf of the Attorney-General.

Morrison, J.—On the application to bail, Dr. McMichael appeared for the accused, and the late Mr. Bethune on behalf of the Crown. The County Attorney was also in Court. The question of bailing was discussed in the absence of the depositions and the warrant of commitment (they being sent for). I asked the County Attorney if the case was a bailable one. He stated the circumstances, and that in his opinion it was. It was then agreed by the counsel that the order to bail should go, and after some discussion the bail was fixed at two sureties in $400, and the accused in $600. The depositions and papers were then produced, but as the application was disposed of, I did not look at them. The exact terms in which the order was drawn up I do not recollect. In such orders I generally direct that the bail shall be persons to the satisfaction of the County Attornies, those gentlemen being responsible officers under the Crown. In this case the order may have been drawn up conditioned that the bail should be to the satisfaction of the Police Magistrate. As the order or a copy is not produced, I cannot say what the terms were, or whether they were complied with, the prosecutor swearing that he is not able to produce it, the original being in the possession of the Police Magistrate, who refused to give to his counsel a copy of it.

I may here briefly state, that so far as the County Attorney is concerned, that he accurately stated what took place on the application to bail, and I see nothing to warrant any reflection on his conduct on that occasion, or in reference to any proceeding since the order was made.

When I granted the order to bail I necessarily assumed that Mason was in custody upon a warrant of commitment for trial, and if it had been suggested that he was only in custody on a remanding warrant from 21st May to the 26th May, I certainly would not have entertained the application. It is, however, contended and sworn to by Mr. Nudel, that Mason was committed for trial on the 19th May, but that the warrant of commitment was not given to the gaoler. It may have been the case, but it is certainly quite inconsistent with the remanding warrant and the indorsements thereon. I may state that I noticed on the original remanding warrant a memorandum that the prisoner was committed for trial under date of 19th May, which memorandum is struck out with the pen, and then follow the further remands after that date to the 3rd June. The recognizance of bail appears to have been acknowledged on the 29th May, the warrant of deliverance being dated the same day. No sensible explanation is given to account for these inconsistencies and irregularities except that which is stated in Nudel's affidavit; but it seems very inconsistent after a prisoner has been committed for trial on the 19th May on a charge of felony to remand him on the same charge from time to time until the 3rd June; and although he was bailed and released from gaol on a warrant of deliverance on the 29th May, that a warrant of commitment against the same prisoner for the same charge should afterwards issue on the 11th June, and be placed in the hands of a police officer, and that all these proceedings should take place under the directions of the same magistrate: and it further appears that since this application a duplicate warrant of commitment has been signed and sent to the keeper of the gaol. These matters, in conjunction with the alleged fictitiousness of the bail, in the absence of any satisfactory explanation, gave occasion on the argument for severe comment, and I regretted much that the Police Magistrate did not think it necessary in justice to his official position to account for these irregularities and repel the imputations involved. On the other hand, Mason the accused in the face of an intimation from the prosecutor's counsel, that if the bail were produced, or if it was shewn by affidavit that the sureties were the persons they were represented to be, that this application would be abandoned, refuses through his counsel to file any affidavit. Under such circumstances, and as the case stands, I can only arrive at the conclusion that the bail are as alleged and sworn to, fictitious or worthless. I am asked by this summons to set aside my own order. I am clearly of opinion that I might do so, as the order was based on the assumed fact that the accused was then in custody on a final warrant of commitment, and which it now turns out was not the case, and the order was inadvertently and improperly granted, and for that reason alone I would be justified in rescinding it; but after reading the depositions, and assuming that the accused was in fact committed for trial as stated by Nudel, the case in my judgment was a bailable one, and the amount of bail fixed sufficient; and if I were now satisfied that the sureties were *bona fide* and not as charged, I would dismiss the application; but when it is alleged that this order, which I ought not to have granted, has been improperly used