plaint; but as judgment had been pronounced, this could be taken advantage of only by writ of error.

Quære, whether it was not defective also, for not shewing that the person complained against was present, or that a summons issued, and that the magistrate was authorized to proceed *ex parte*.

[38 U. C. Q. B. 431.]

The defendant was convicted of perjury at the Assizes, at Toronto, before Galt, J., who reserved a case for the opinion of this court. The indictment was as follows:

The jurors for our Lady the Queen upon their oath present, that heretofore, to wit, on the 16th day of September, 1869, George Albert Mason came in his own proper person before A. M., Esquire, then and yet being police magistrate of the City of Toronto, in the County of York, and one of Her Majesty's justices of the peace in and for the said City, and then and there before the said A. M., Esquire, upon a certain information of G. A. Mason,—wherein it was sworn that the said complainant was informed and believed that James King (Caroline and Duchess), within the past three months, to wit, on the 7th day of September, A.D. 1869, did sell wine, beer, or spirituous liquors, without a license so to do, contrary to law,—in due form of law was duly sworn and gave evidence, and did then and there upon his oath aforesaid falsely, wilfully, and corruptly depose and swear in substance and to the effect following: "That on Wednesday, the first day of September, 1869, he, the said G. A. M., saw one Mrs. King, meaning one Mary King, the wife of one James King, of the City of Toronto, grocer, hand to one H. the bottle (meaning bottle of brandy) off the shelf, and that said H. paid her (meaning the said Mrs. King) for it, and that he (meaning the said James King) had at the time bottles of liquors exposed in his store for sale," which facts were material to the said issue, and to the matter being enquired into on the said information—whereas in truth the said G. A. Mason did not on Wednesday, the first day of September aforesaid, see the said Mrs. King hand to the said H. the bottle of brandy off the shelf, and the said H. did not pay her for it, and the said James King had not at the time bottles of liquor exposed in his store for sale; and the said G. A. M. did thereby commit wilful and corrupt perjury."

The information was produced and witnesses were examined, who swore to the falsity of the oath of the prisoner. No summons was proved to have issued on the information. The learned judge stated, "It does not expressly appear from my notes that King was present at the examination" (before the police magistrate) "but from what appeared at the trial I am satisfied that he was"

On the close of the case for the Crown, McMichael, on behalf of the prisoner, objected that there was no evidence of any case depending before the police magistrate: that the evidence shewed only a complaint; but there was no proof that any summons was issued, nor any step taken to bring the party complained of before the magistrate. The learned judge overruled the objection, but reserved the point.

The question for the consideratian of the court was, whether the objection was sustained on the evidence, and should prevail.

The prisoner was sentenced to be imprisoned in the common jail for twelve months, with hard labour, but execution was respited, under Con. Stat. U. C. ch. 112, until the question above stated had been considered and answered.

McMichael for the prisoner. No jurisdiction is shewn on the indictment, enabling the police magistrate lawfully to take the oath or deposition of the prisoner which was the subject of perjury. A summons to the person informed of to appear should have been shewn, or else that he had in fact appeared. There was therefore no proper trial or issue before the magistrate: *The King* v. *Pearson*, 8 C. & P. 119; *Regina* v. *Hurrell*, 8 F. & F. 271; *The Queen* v. *Overton*, 4 Q. B. 83.

Read, Q.C., for the Crown, cited *Regina* v. *Shaw*, 1 Leigh & Cave, 579; S. C. 10 Cox C. C. 66; *Regina* v. *Whybrow*, 8 Cox C. C. 438; Russell, C. & M., 4th ed., vol. III. p. 97; *Vestry of Chelsea* v. *King*, 34 L. J. M. C. 9; *Regina* v. *Atkinson*, 17 C. P. 295; Con. Stat. C. ch. 103.

WILSON, J.—The question submitted must, I think, be answered in the negative. There was a complaint proved, and it was not, in my opinion, necessary that any summons should have issued, or that any step should have been taken to bring the person complained of before the magistrate.

So long as the person informed against was present, the magistrate might rightly proceed, though he did not appear on summons, or did not require compulsion to make him appear. His actual presence was all that was required; the manner of his getting there was of no consequence to the investigation.

The Consol. Stat. C. ch. 103, secs. 20, 24, require the information to be laid on oath, unless it is expressly dispensed with by Act of Parliament. The summons may be issued if required. If it be issued and the party fail to appear, the magistrate may proceed *ex parte*: secs. 7, 32; or he may issue his warrant to apprehend the party: secs. 6, 32.

The case of *Regina* v. *Shaw*, cited, shews a summons not to be necessary if the party choose to appear without it, and there is nothing opposed to this rule in our statutes. The same law is stated in Paley on Convictions, and several authorities are cited for it.

This disposes of our duty, as we have answered the question put to us: *Rex* v. *Boultbee*, 4 A. & E. 498; *Regina* v. *Shaw*, 11 Jur. N.S. 415.

But it may be as well to state what we observed upon in the argument, that the indictment seems to be quite insufficient in point of law.

It is not stated where the liquor was sold. It may, for anything that appears, have been sold in an adjoining county, or in an adjoining province, or in some foreign country, and what right the police magistrate of the City of Toronto had to take cognizance of it is not shewn. There is therefore a total want of jurisdiction on the face of the indictment.

The Ontario Act, 32 Vic. ch. 32, sec. 25, requires the proceedings to be carried on before magistrates "having jurisdiction in the municipality in which the offence is committed."

The police magistrate has drawn his information without shewing his jurisdiction over the offence, and he has also alleged the selling without license to have taken place "within the past three months," which is the period fixed by Con. Stat. C. ch. 103, sec. 26, without noticing that this limitation is shortened by the Ontario Act,