thorized the judge to bail the prisoner, not to discharge him. That the 5th section of this act was only in furtherance of the 3rd section, and gave no revisory or other power greater than it conferred. That it was not the intention of the legislature to make a judge in chambers a court of review from the proceedings of magistrates. That this intention, and the construction he put upon the 3rd and 5th sections was to be inferred from the fact that the statute gave an appeal from the court into which the proceedings were to be returned by the judge to the Court of Appeal, but did not give it from the decision of a single judge. That the duty of justices of the peace was pointed out in the Con. Stat. C. cap. 102, sec. 57; and he is authorized to determine, upon the evidence, whether the accused shall be committed for trial, bailed or discharged. That the judge ought not to interfere with his decision. That the power of this police magistrate to deal with this question was clear from ss. 357-360 of the 29 & 30 Vic. cap. 51. He was *ex officio* a justice of the peace for the whole county, and could issue any warrant or try and investigate any offence in a city when the offence has been committed in the county in which such city lies, or which it adjoins.

J. WILSON, J.—On the question of jurisdiction it is clear, from s. 357 of the 29 & 30 Vic. c. 51, that the police magistrate is *ex-officio* a justice of the peace in and for the county of York; and, by s. 360, a justice of the peace for a county in which a city is may try and investigate any case in a city, when the offence has been committed in the county or union of counties in which such city lies, or which such city adjoins. The police magistrate had therefore jurisdiction, &c, both in the county and city, and the proceedings are legal in this respect.

Our late statute 29 & 30 Vic. cap. 45, is chiefly taken from the imperial statute 56 Geo. III. cap. 100, but the 5th section is new. Writs of *certiorari* had in practice been issued in vacation by order of judges in chambers in this province previous to the passing of this act, but the learned Chief Justice, in the case of *The Queen* v *Burley*, 1 U. C. L. J. N.S. 34, for extradition, doubted the power of judges to order these writs in vacation, and it was proper that all doubts should be removed respecting this practice. In that same case it was intimated that, in the opinion of some of the judges, every man committed on a criminal charge had the right to have the opinion of one of the Superior Court judges pass upon the cause of his commitment by an inferior jurisdiction.

In my view of this clause it had reference to both these opinions. Before this act was passed, when by the return of the *habeas corpus* and the proceedings upon which a prisoner stood committed, it appeared that the commitment was illegal, it had been the practice for judges in chambers to discharge him.

It is true that the power to determine upon the sufficiency of the proceedings to warrant such confinement is not given in direct words, but it is certainly by the plainest implication. The *habeas corpus* and its return show the immediate cause of the detention, which may on its face be all right, but section 5 of the act goes further, and authorizes the issue of a writ of certiorari for the production before the judge of all and singular the evidence, depositions, convictions, and all proceedings had or taken touching or concerning such confinement or restraint of liberty. Why? "To the end that the same may be viewed and considered by such judge or court, and to the end that the sufficiency thereof to warrant such confinement or restraint may be determined by such judge or court."

The third section of the act has reference to the truth of the facts stated in the return to a writ of *habeas corpus*. Before the 59 Geo. III. there was no way of enquiring into the truth of the facts as stated in the return. They might be good as stated but untrue in fact. It was so here until last year, but with no practically bad result, for we have had no case in which a false return has been suggested. Now, the truth of the facts in the return law can be enquired into in the manner pointed out by the 3rd section. I do not, however, see, as has been contended for here, how the fifth section is to be construed as referring to this, or in aid of it only. It appears to me that it has a different object to the one which has been already mentioned.

Adopting the views expressed, I cannot help holding that a judge is bound to the examine proceedings anterior to the warrant, to see that they authorize it, and if they do not that he is bound to determine whether they warrant the detention, and if not to discharge him.

In this case the prisoner is so far in voluntary custody, for all he was required to do was to enter into his own recognizance. He refused and was committed. I find him in prison, and so entitled to the benefit of the act, in strict right.

By stat. 22 Vic. cap. 102, s. 57, when all the evidence upon the part of the prosecution against the accused has been heard, if the justice be of opinion that it is not sufficient to put the accused party upon his trial for any indictable offence, he shall forthwith order him to be discharged as to the information then under enquiry; but if in the opinion of the justice the evidence is sufficient to put the accused party upon his trial for an indictable offence, although it may not raise such a strong presumption of guilt as would induce such justice to commit the accused for trial without bail, &c., then such justice shall admit the party to bail, &c. In this respect the police magistrate has complied with the provisions of the statute. He did not think it was a case where the presumption of guilt was so strong as to induce him to commit the prisoner for trial without bail, but still a case for which he thought bail ought to be required.

I agree with the police magistrate that it was a case which justified him in requiring bail.

CHANCERY.

(*Reported by* MR. ALFRED J. WILKES, *Student-at-Law.*)

BROOKE v. CAMPBELL.

Sale of land for taxes—Assessment—Sheriff's advertisement.

Where a lot containing 100 acres was returned to the treasurer of the county, one year as "non-resident" land, and the next year, half the lot, 50 acres, was returned as "resident," *Held* that, although the whole lot was owned by one individual, the treasurer was warranted in dividing it into two parcels in his treasurer's books, and in charging statute labor upon each, as upon separate lots. *Held* also, that designating lands as "patented" in a