trained of his liberty of one of the most inestimable of privileges; and it is my duty to see, in favor of liberty, that the provisions of the statute are scrupulously observed. If it appears that the provisions of the statute have been observed, and that the warrant is in accordance therewith, in such case the prisoner's liberty is entirely in the hands of the Privy Council.

It was not attempted to be argued that if the Clerk of the Privy Council countersigned a warrant signed by only one Justice, that such a warrant would justify the detention of a prisoner under the statute, without bail or trial. So here, if Mr. Boulton was not authorized to act, or could not lawfully sign a warrant as a Justice, the prisoner's case would not be within the operation of the statute. Then, as to the second objection, that the affidavit cannot be received to contradict the return, the gaoler returning that the prisoner was detained under a warrant signed by two Justices of the Peace, naming them. The return just amounts to this—the cause of the detention was the warrant annexed. It would be absurd to hold that because the gaoler in his return designated the parties who signed the warrant as two Justices, an ivestigation into the fact was precluded. In *Baily's case*, 3 E. & B. 614, Lord Campbell allowed the prisoner to use affidavits to shew that the Justices had no jurisdiction. So here, I am of opinion, that it is competent to the prisoner to shew that the persons signing the warrant have no authority to act as Justices. But the point is disposed of by the 3rd sec. of chap. 45 of 29 & 30 Vic., which was not referred to in the argument. That section provides that although the return to any writ of *habeas corpus* shall be good and sufficient in law, it shall be lawful for any Judge before whom such writ shall be returnable to proceed to examine into the truth of the facts set forth in such return, by affidavit, and to do therein as to justice shall appertain, &c.

The only question that remains upon the present return is, whether the further detention of the prisoner can be sustained by this warrant, upon which two points arise: 1st., whether Mr. Boulton was lawfully authorized to act as a Justice of the Peace for the city of Toronto. 2nd. If he was acting unlawfully, by reason of his not first taking the oath of qualification, was the act of his siguing the warrant invalid, so far as the detention of the prisoner is concerned?

By the 357th section of our Municipal Act, as amended by the 38th sec. of 31 Vic. cap. 30 of the statutes of Ontario, passed on the 4th March last, it is enacted that the Reeve of every town, &c, shall be, *ex-officio*, a Justice of the Peace for the whole county, &c., and aldermen in cities shall be Justices of the Peace in and for such cities: *Provided always*, that before any Alderman or Reeve shall act in the capacity of a Justice of the Peace for the city or county, he shall take the same oath of qualification, and in the same manner as is by law required by Justices of the Peace." And the amending Act repealed all Acts or parts of Acts inconsistent with its provisions relating to the Municipal Institutions of Upper Canada. So that, whatever authority Mr. Boulton, being an alderman, had as a Justice of the Peace, previous to the 4th March, was gone, and after that date, the date of the passing of the amending Act, his authority to act as a Justice of the Peace depended upon the 357th sec. as amended. And as it is in fact admitted that Mr. Boulton did not take the oath of qualification, and did not comply with the 357th section referred to, he was acting unlawfully and in contravention of the statute. I do not mean to say that Mr. Boulton was acting wilfully in the matter, because, from the affidavits filed, he appears to have acted in ignorance of the then state of the law. Then, did the neglect of Mr. Boulton to take the oath required, and which the statute makes a condition precedent to his acting as a Justice of the Peace, render his act invalid for the purpose of the imprisonment of the prisoner? It is contended by the Crown that the proviso added to the 357th section did not prevent an alderman from acting as a Justice of the Peace without taking the oath; that by his doing so it only subjected him to be prosecuted; and the case of the *Margate Pier Co.* v. *Hannan et al.*, 3 B. & A. 267, was relied on as an authority. I perfectly concur in that decision and the grounds upon which the judgment is rested, viz., that the acts of a Justice of the Peace who has not duly qualified himself are not absolutely void, so that a seizure under a warrant signed by him would not make the parties who executed it trespassers. And so in the case of the warrant now before me, as in the case alluded to; it might form a good justification to an action brought against any person or officer who acted under it, and that any act done under it, such as the detention of the prisoner in custody, would very properly be sustained. But there, I think, its validity ends; that while it is not absolutely void, yet, upon an application of this nature, it is so far defective that a person detained in custody under it may be discharged. It seems to me it would not be quite consistent to hold that while a magistrate would be liable to be indicted and punished for the act of signing a warrant, a person arrested under it would nevertheless be liable to be detained in custody. On grounds of public policy, I can see good reason why acts done under such a warrant should be justified and sustained, but I cannot bring myself to the conclusion that it is a sufficient warrant for the detention of the prisoner. In doubtful cases the Courts always lean in favor of liberty, and upon this point the prisoner is entitled to my judgment in his favor.

The only other matter for consideration is, whether the warrant, being signed by Mr. McMicken, whose authority as a Justice of the Peace is not objected to, the prisoner should not be held to bail, but in that view of the case I have nothing before me to shew that any charge was made against the prisoner, or that proceedings were had to authorize any such commitment, such as the examination of the prisoner, &c. The prisoner positively denies under oath that he is guilty of any such charge as is mentioned in the warrant. He has taken, as already stated, the usual steps to ascertain and bring before me, by writ of *certiorari*, the grounds of the charge and the proceedings taken against him without effect, and on the part of the Crown nothing is shewn. I therefore see no grounds for the further detention of the prisoner, and he must be discharged.

Prisoner discharged.