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 signing 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 And the amending Act repealed all Acts or parts of Acts inconsistent with its provisions relating to the Municipal Institutions of Upper Canada.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.

Lovell v. Wardroper.

Interpleader—Security for costs—Delay.

Held, 1. That an execution creditor made a defendant in an interpleader issue may be ordered to give security for costs; but that

2. A delay in applying for security from the 2nd July until the 11th August, is fatal to the application.

Chambers, August 21, 1868.]

This was an application by the plaintiff in an interpleader issue for security for costs, on the ground that the defendant resided out of the jurisdiction, the plaintiff being the claimant and the defendant the execution creditor.

On the 16th June the interpleader order was made, on the 20th June demand of security for costs was served, on the 2nd July the interpleader issue was delivered, and on the 11th August the application for security was made.

Draper, C. J.—*Williams* v. *Crossling*, 4 D. & L. 660, shews that an execution creditor, made a defendant in an interpleader issue, and resident out of the jurisdiction, will be compelled to give security for costs. If he had been left to sue the sheriff for not executing his writ, he must have given such security. But this application should, according to the rule of court, be made before issue joined. Here there has been a delay from 2nd July to 13th August, and plaintiff knew on 20th June that defendant resided out of the Province, and demanded security.

Summons discharged.