on the first issue, which was entered for the defendant on the ground that the matter stated in the second plea was a defence on the general issue, was erroneously entered. There seems strong reason for contending that the special plea is insufficient after verdict on the ground that it is pleaded to the whole declaration; and there are matters in the second count of the declaration which cannot be considered as a report of what took place before the magistrate on the occasion referred to. But if we were to give judgment depriving the defendant of any benefit from this special plea, we can by no means order that the verdict found for the defendant on the first issue should be set aside and a verdict entered for the plaintiff on that issue instead thereof. It is a good defence to an action for a libel, that it consists of a fair and impartial, though not *verbatim*, report of a trial in a court of justice, and such defence is admissable under "not guilty," which puts in issue as well as the lawfulness of the occasion of the publication, as the tendency of the alleged libel: (*Hoare* v. *Silverlock*.) So far as the first and third counts of the declaration are concerned, we cannot adjudge that the plaintiff is entitled to a verdict and to damages; for, according to what the court decided on the validity of the sixth plea in Duncan v. Thwaites, there is strong ground for contending that, at all events, the defendant was entitled to a verdict on those counts. They contain no detail of the evidence, nor any comment upon the case, but nakedly state the result of what the justice thought fit to do. The second count is much more objectionable, for it begins with professing to give an account of a former proceeding before the magistrate, in which the plaintiff was prosecutor, and out of which the charge of perjury against the plaintiff arose; and in this account the reporter takes upon himself to aver that the evidence adduced against the plaintiff entirely negatived his story. Such conclusions are wholly unjustifiable, and, when the report of law proceedings has mixed up with it commentaries reflecting upon any of the parties whose names appear in it, it entirely loses the privilege which it might otherwise claim. Nevertheless, after the course which was pursued at the trial of this cause, and after the verdict of the jury, we think that we ought not to do more for the plaintiff in respect of this count than to allow a verdict to be entered for him upon it, on the plea of not guilty, unless we should be of opinion that the remainder of this count, which gives a detailed report of what took place before the magistrate upon the charge against the plaintiff on the 3rd of July, although unaccompanied by the introductory statement, and although impartial and correct, could not in point of law be justified. The plaintiff's counsel contended that the privilege of reporting legal proceedings must be confined to the Superior Courts of law and equity; but on such a question the dignity of the court cannot be regarded, and we must look only to the nature of the alleged judicial proceeding which is reported.—For this purpose no distinction can be made between a court of *pie poudre* and the House of Lords sitting as a court of justice.—As to magistrates, if, while occupying the bench from which magisterial business is usually administered, they, under pretence of giving advice publicly, hear slanderous complaints, over which they have no jurisdiction, although their names may be in the commission of the peace, a report of what passes is as little privileged as if they were illiterate mechanics assembled in an alehouse. Hence the well-decided case of *Macgregor* v. *Thwaites*.—Where magistrates are duly acting within their jurisdiction, questions of great importance and difficulty arise as to the publication of all the proceedings before them. It was contended at the bar that in no case have the reports of proceedings before magistrates any privilege. To this general proposition we can by no means assent. Proceedings before magistrates under the 11 & 12 Vict. c. 43, "with respect to summary convictions and orders," in which, after both parties are heard, a final judgment is given, subject to appeal, are, we think, strictly of a judicial nature; the place in which such proceedings are held is an open court; the defendant, as well as the prosecutor, has a right to the assistance of an attorney and counsel, and to call what witnesses he pleases, and both parties having been heard, the trial and the judgment may lawfully be made the subject of a printed report, if that report be impartial and correct. But the proceedings which we have to consider in the present case were before a magistrate acting under 11 & 12 Vict. c. 42, "with respect to persons charged with indictable offences." By a summons a charge was brought before an alderman of London at Guildhall, against the now plaintiff, for wilful and corrupt perjury; and an application was made that he might be committed to prison, or give bail to take his trial for this offence. After several adjournments, and examining all the witnesses brought before him, the magistrate dismissed the summons. In three different numbers of the defendant's newspaper there were reports of these proceedings, all which reports, after the verdict of the jury, we must suppose to have been impartial and correct, and published without malice. With respect to the alleged libels in the first and third counts (as we have already observed), the defence seems to be sufficient. The great doubt seems to be as to the report of the proceedings against the plaintiff in the second count of the declaration, which gives a true account of what had been done on the 3rd July, and sets out evidence injurious to the plaintiff, the charge against him being still pending—that is what causes the doubt—the charge against him being still pending when the second publication took place. The decision of this court on the second plea in *Duncan* v. *Thwaites* is said to have determined the general doctrine that a correct report of the proceedings which took place in the course of a preliminary inquiry before a magistrate, upon a charge of an indictable offence, cannot be justified. But we must recollect that there the alleged libel contained a highly-coloured statement of the reporter, evidently insinuating the guilt of the accused in having indecently assaulted a female child thirteen years old and attempted to violate her person. "The evidence of the child herself and her companion of the same age displayed such a complication of disgusting indecencies that we cannot detail it." (That is the language of the statement.) The second plea averred generally that the evidence of the child herself and her companion of the same age did, upon that occasion, display a complication of disgusting indecencies, and that the alleged libel contained no other than a fair and just report of the proceedings before the magistrates. Great stress was likewise laid by Lord Tenterden, in delivering the judgment of the court, upon the fact that there "the proceedings terminated by holding the party accused to bail, to take his trial before a jury, so that a trial might be expected at the time of each of the publications." In the present case, the examinations terminated in the dismissal of the summons; no other proceeding took place against the plaintiff; he did not commence his action till after the summons had been dismissed, and although he alleges special damages by a pecuniary loss in his business, none was proved. We are not prepared to lay down for law that the publication of preliminary inquiries before magistrates is universally lawful, but we are not prepared to lay down for law that the publication of such inquiries is universally unlawful. Although there are numerous *obiter dicta*, there is no decision to this effect. In the cases which were relied upon to establish the general doctrine, it will be seen that there were vituperative comments accompanying the statement of of the evidence, or some aggravation attending the publication of the report, or some peril which it was likely to cause to the person complaining of it. Here we have a preliminary inquiry before a magestrate, which turned out to be unfounded, and was dismissed. If the whole inquiry had taken place before a magistrate during one hearing, would an impartial and correct report of the proceeding published in a newspaper next morning have been actionable? We think not. In *Curry* v. *Walter* it was decided, above sixty years ago, that an action cannot be maintained for publishing a true account of the proceedings of a court of justice, however injurious such publication might be to the character of an individual. The alleged libel there consisted of a report in the *Times* newspaper of an application by Mr. Erskine in the Court of Q. B. for a rule to show cause why a criminal information should not be filed against magistrates for a conspiracy corruptly to refuse a license to a public-house. The rule was refused on the ground that the magistrates had not been served with notice of the motion. The report truly set out the contents of the affidavit making the charge. One of the magistrates having brought an action for the alleged libel, it was tried before Eyre, C. J., and he told the jury that "though the matter contained in the paper might be very injurious to the character of the magistrates, yet he was of opinion that, being a true account of what took place in a court of justice, which is open to all the world, the publication