

and proceedings before the magistrate to ascertain if a conviction was justified, although the formal conviction returned appears regular on its face:" *Rex v. Simmons*, 14 Can. Crim. Cas. 5, 17 O. L. R. 239, 12 O. W. R. 776, per Anglin, J. Assuming the accuracy of this, in cases of this kind, the case is not advanced; for the Court will not, if there be any evidence at all upon which a jury or a Judge might so find, interfere with a finding against evidence or the weight of evidence: *Rex v. McArthur*, 8 O. W. R. 694. I think, had it been a question in a civil proceeding in which it rested upon the plaintiff to prove that the defendant had made a sale in Toronto, that any jury or Judge would be well justified in finding such sale proved upon the admissions made, at least coupled with the fact that no evidence was offered by the defendant to the contrary. I cannot look at his affidavit now; the proper place to have the evidence adduced was before the police magistrate.

2. Then it is urged that the evidence of the confession was not rightly admitted. It is said that, before evidence of a confession can be admitted, the prosecution must prove affirmatively that the confession was free and voluntary; and such cases as *Regina v. Thompson*, 17 Cox C. C. 641, are cited. I do not think it necessary to go through the cases or to inquire what is the rule in its exactness. Much might be said in favour of the opinion of Erle, J., in *Regina v. Baldry*, 2 Den. C. C. 430: "Unless it be clear that there was either a threat or a promise to induce it, it ought not to be excluded." Granting the rule as claimed, and granting also that such an objection can be taken upon an application of this kind—it has been laid down that "a Court acting within the sphere of its jurisdiction is conclusively presumed, so far as all collateral inquiries are concerned, to have performed its duty, and the question whether other than legal evidence was admitted will not be considered by a higher Court:" *Hurd on Habeas Corpus*, 2nd ed., sec. 196, p. 281:—there is nothing to shew that all the facts necessary to be established in order to make such evidence admissible were not proved to the satisfaction of the police magistrate, in a manner which should have been satisfactory to him. Only the evidence in the case bearing upon the questions to be tried need be taken down, as I read the law. There is no more necessity for the written record to contain the allegations of a witness which will