within the 30 days prescribed, and Mr. Patterson moved that the gaoler be allowed to amend his return; and, after hearing the parties, the learned judge ordered the return to be amended, and upon the same being read,

Patterson, for the Crown, now objected, and contended:

1. That as it appeared that the warrant had been duly countersigned, the provisions of the 31st Vic., chap. 16, deprived the judge of authority and jurisdiction to entertain the motion made on the part of the prisoner, either with a view to his discharge or to his being bailed.

2. That if a judge had authority to examine into the validity of the warrant or detention of the prisoner, Mr. Boulton, being an alderman of the city of Toronto, was also a Justice of the Peace, *ex-officio*, and that the Act of the Province of Ontario amending the Municipal Act did not apply to Mr. Boulton, and that if it did, his acts, nevertheless, as a Justice of the Peace, were not void, although he himself might be liable to a penalty, or perhaps to a criminal information, but the acts of a Justice of the Peace who is not duly qualified are not absolutely void, as he contended: *Margate Pier Co.* v. *Hannam*, 3 B. & A. 267.

3. That it was not competent for the prisoner to contradict the return made by the gaoler, which return set out that the warrant was signed by two Justices of the Peace, &c.

In reply it was alleged, that neither he nor his counsel were aware or could obtain the particulars of the charge against him, or upon what information he was arrested: that no statement was made or taken in his presence, on oath or otherwise, of the facts or circumstances of the case before his commitment, as required by the 30th sec. of the Statute relating to the duties of Justices out of Sessions, in relation to persons charged with indictable offences; and, in order to ascertain what evidence, depositions or proceedings were had touching the restraint of the prisoner's liberty, and to the end that the judge might consider the same, and the sufficiency thereof to warrant such restraint, should he hold that the warrant was not one within the operation of the 31st Vic., a writ of *certiorari* had been issued, requiring a return of the depositions, &c., under the 2th sec. of the Act of 29 & 30 Vic. "for more effectually securing the liberty of the subject." Such writ was served on the committing justice, Mr. Boulton, and on the Clerk of the Peace for the city of Toronto; and he filed affidavits shewing that neither Mr. Boulton nor the Clerk of the Peace had in their possession any proceedings whatsoever touching the commitment of the prisoner; and that upon search at the office of the County Attorney for the county of York, and at the office of the clerk of the Police Court of the city of Toronto, no papers or documents were to be found.

Under the 39th sec. of chap. 102, the information, depositions, &c., should have been delivered by the Justice, without delay, to the County Attorney, or the Clerk of the Peace for the city. No depositions were produced on the part of the Crown.

MORRISON, J.—After carefully considering the whole case, I am of opinion that the prisoner is entitled to be discharged. It appears, as already stated, that he was arrested on the 4th May last under the warrant referred to, purporting to be signed by two Justices of the Peace for the city of Toronto. It is clear that Mr. Boulton (one of them) was not acting under any commission as a justice, but that he was an alderman of the city of Toronto, and it is manifest that he, as such alderman, did not take the oath of qualification, as provided by the 38th sec. of the statute of the Province of Ontario. These are the most important facts appearing and bearing on the case.

Several objections in point of law were taken by the Crown. First, as before stated, that the warrant being duly countersigned by the Clerk of the Privy Council that the subject matter was wholly withdrawn from my jurisdiction. I see nothing in the statute to warrant such a conclusion. The object of the Legislature and the words of the statute indicate that, as some protection to persons who might be charged with any of the offences mentioned in the Act of Canada (31 Vic. chap. 16), they could only be committed upon a warrant signed by two Justices, and such warrant, being countersigned within 30 days, as provided, then, in such case, no Judge should bail or try any such prisoner without an order from the Queen's Privy Council of Canada. The object of the statute, so far as any of the offences mentioned therein, was to suspend the operation of the writ of *habeas corpus*, and to deprive the subject restrained 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 investigation 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