learned judge did not refuse such evidence, but, on the contrary, offered to receive it.

The venue was properly laid in the county of Leeds, for it was there the arrest, the act complained of took place: Con. Stat. U. C. ch. 126, s. 11.

It was, also, properly left to the jury to say whether there had been an information in fact made against the plaintiff, and the jury were right in finding there had not been an information upon the evidence submitted, although the warrant produced by the plaintiff recited that an information had been made in the matter.

Trespass was maintainable against Collinson, as well as case: *Hunt* v. *M'Arthur*, before cited; *Leary* v. *Patrick*, 15 Q. B. 268.

Gwynne, Q. C., supported the rule.—Notice of action to Ferguson was necessary, although he acted without authority: *Bross* v. *Huber*, 18 U. C. Q. B. 285; *Kirby* v. *Simpson*, 10 Ex. 358; *Morris* v. *Smith*, 10 A. & E. 188; *Prestidge* v. *Woodman*, 1 B. & C. 12; *Rex* v. *Mattos*, 7 C. & P. 458.

At most, this was a case of an excess of jurisdiction, not a case where there was no jurisdiction: Ferguson had jurisdiction over the offence, but not in Kingston, where he made his warrant.

The notice which was served was insufficient for the reasons already stated: *Martin* v. *Upcher*, before cited; *Breeze* v. *Jerdein*, 4 Q. B. 585; *Prickett* v. *Gratrex*, 8 Q. B. 1020; *Madden* v. *Shewer*, 2 U. C. Q. B. 115; *Connolly* v. *Adams*, 11 U. C. Q. B. 327; *Cronkhite* v. *Sommerville*, 3 U. C. Q. B. 129.

(To be continued.)

COMMON LAW CHAMBERS.

(Reported by R. A. HARRISON, Esq., *Barrister-at-Law.)*

IN THE MATTER OF WELLINGTON CROW.

Habeas corpus—Conviction by one magistrate when two required—Effect of erroneous recital in warrant of commitment—Necessity to show before whom convicted—Several warrants—Periods of imprisonment running contemporaneously or consecutively.

Where a statute empowers two justices of the peace to convict, a conviction by one only is not sufficient.

It lies on a party alleging that there is a good and valid conviction to sustain the commitment, to produce the conviction.

The warrant of conviction should show before whom the conviction was had.

An adjudication mentioned in the margin of the warrant of commitment, where there are several warrants of commitment, each for a distinct period of imprisonment, that the term of imprisonment mentioned in the second and third warrants shall commence at the expiration of the time mentioned in the warrant immediately preceding, is valid.

If the portions in the margin of the second and third warrants could not be read as portions of the warrants, the periods of imprisonment would nevertheless be quite sufficient, the only difference being that all the warrants would be running at the same time instead of counting consecutively.

[Chambers, 1865.]

This was a summons calling upon the Attorney-general or his agent to show cause why a writ of *habeas corpus* should not be issued in this matter.

The prisoner had been committed by the police magistrate of the city of Hamilton, on three several convictions for enticing, persuading and procuring soldiers to desert her Majesty's service.

There were several warrants of commitment. Each warrant recited a conviction "before me, James Cahill," the police magistrate, and concluded "Given under my hand and seal," &c., and each one was subscribed as follows: — "J. Cahill, police magistrate of the city of Hamilton; Robert Chisholm, ald.; P. Crawford, ald."

Each warrant was dated 11th March, 1863, and each numbered. One was numbered 1, another was numbered 2, and the third was numbered 3.

The first warrant directed imprisonment for six months at hard labor; the second six months at hard labor, and it had this memorandum in the margin, "The time mentioned in this committal to commence at the expiration of the time mentioned in another committal which is numbered number 1;" and the third warrant directed imprisonment for six months at hard labour, and had the like memorandum which was upon number 2, but stated that the time in number 3 was to commence from the expiration of the time mentioned in number 2.

James Paterson argued, for the prisoner, that the warrant was defective, because it showed the conviction to have been made by one magistrate, and that the terms of imprisonment in the warrants numbers 2 and 3 were defective and uncertain.

R. A. Harrison, for the Crown, argued that the conviction itself should be before the judge in Chambers, because the presumption was that the conviction was correct, and it should be assumed that the warrant contained a misrecital of the conviction having been had only before the one magistrate; and it rested on the prisoner to complete his case by procuring the conviction; and that the periods of imprisonment in the warrants 2 and 3 were quite certain.

ADAM WILSON, J.—The Mutiny Act in force when these convictions took place, was the 27th Victoria, chapter 3, section 81, which provides that the conviction shall be before two justices.

The conviction, therefore, if it be really in the form in which the warrant recites it to be, is erroneous and void.

Am I to assume that the conviction is in this defective form, or can the warrant containing a misrecital be considered as not void, or may it be amended, or can a new warrant be issued?

By the Consolidated Statutes for Canada, cap. 103, sec. 71, one justice may issue his warrant of commitment after the case has been heard and determined, although the case required more than one justice to adjudicate upon it, and by sec. 72 it is not necessary that the justice who so issues his warrant shall be one of the justices by whom the case was heard or determined. It would seem, therefore, to be immaterial as a fact whether or not that part of the warrant is true, that the prisoner was convicted before Mr. Cahill.

Is it necessary, however, that it should appear before whom he was convicted? In all the forms which are given of warrants of this nature in the schedules to the statute, it is prescribed that the fact shall be recited. In *Rex* v. *York*, 5 Burr. 2684, the warrant of commitment stated that the prisoner had been brought "before me and convicted;" and Lord Mansfield, C. J., said