

business at Kingston, a quantity of coal oil at a certain price. The plaintiff at Kingston accepted the offer of the defendants by telegraph to them at Toronto, and they thereupon shipped the oil to him at Kingston. Upon its arrival, however, the plaintiff found, as he alleged, that the quantity of oil stated to have been contained in the barrels ran short, owing, as was supposed, to leakage, which it was sworn must have taken place before it reached Kingston. The plaintiff then sued defendants in the Division Court at Kingston for the shortage.

It was objected at the trial that the action could not be brought at Kingston, on the ground that the cause of action did not arise there within the meaning of the statute, and that it could therefore only properly be brought where the defendants resided, under the further provision of the statute.

The learned judge overruled the objection, and gave judgment for the plaintiff for the full amount of the claim.

The defendants then applied for a prohibition. *McKenzie*, Q. C., shewed cause.

The following cases were cited: *Watt v. VanEvery*, 23 U. C. Q. B. 196; *Kemp v. Owen*, 14 U. C. C. P. 432; 10 U. C. L. J. 269; *Aris v. Orchard*, 6 H. & N. 159.

MORRISON, J.—In the case of the Judge of the County Court of Brant, in *Watt v. VanEvery*, the Chief Justice of Upper Canada, in giving judgment, held that the cause of action within the 71st section of the Division Court Act, is not the contract only, but the contract and breach for which the plaintiff claims damages. The sale of the oil in the present case took place where the defendants reside, at Toronto, to be delivered to the plaintiff at Kingston, and the breach is that the full quantity of oil was not delivered to the plaintiff at Kingston, the barrels being short of measure. On the authority of the cases cited, the cause of action arose partly at Toronto and partly at Kingston, and the plaintiff must therefore sue the defendants in the Division Court of the division in which they reside, viz. at Toronto.

The rule will go for the prohibition, but under the circumstances detailed in the affidavits there will be no costs.

Prohibition granted.

THE QUEEN V. PATRICK BOYLE.

31 Vic. cap. 16—Warrant under—29, 30 V. c. 51, sec. 357—31 V. (Ont.) c. 30, sec. 35—When alderman qualified as J. P.—*Habeas Corpus*—Return to.

Held, 1. That under the Municipal Acts an alderman is not *ex officio* legally authorized to act as a J. P. until he has taken the oath of qualification required for such.

2. That a warrant of commitment under 31 Vic. c. 16, signed by one qualified J. P. and by an alderman who has not taken the necessary oath, is invalid to uphold the detention of a prisoner confined under it, though it might be a justification to a person acting under it, on an action against him.

3. That the mere fact of the warrant having been countersigned under the statute by the Clerk of the Privy Council does not withdraw the case from the jurisdiction of a Judge on a *habeas corpus*.

4. That the prisoner may contradict the return to the writ of *habeas corpus* by showing that one of the persons who signed the warrant was not a legally qualified J. P.

[Chambers, July 27, 1868.]

The prisoner, Patrick Boyle, was committed to the Gaol of the City of Toronto on the 4th May last, under the provisions of 31 Vic., cap. 16, on

a charge of being a member of a treasonable society, called the Fenian Brotherhood.

An order was obtained on behalf of the prisoner from Mr. Justice Adam Wilson, upon which a writ of *habeas corpus* was issued, by virtue of which the Gaoler, on the 22nd July, brought up the prisoner, and returned to the writ that the prisoner was detained by virtue of a warrant of commitment of George D'Arcy Boulton and Geo. McMicken, Esqrs., two of Her Majesty's Justices of the Peace in and for the County of the City of Toronto, and which warrant was to the writ annexed.

The warrant, as stated on its face, was issued under the authority of the Act 31 Vic. chap. 16, and was in the following words:—

"To all or any of the Constables, &c.

"Whereas Patrick Boyle was this day charged before us, two of Her Majesty's Justices of the Peace in and for the County of the City of Toronto, on the oath of Charles Follis, for that he, the said Patrick Boyle, is a member of and hath joined a certain unlawful, illegal and treasonable association, in the said City of Toronto, called the Hibernian Benevolent Society, which Society is connected with and is part of an association in the said City of Toronto by the name of the Fenian Brotherhood; the said association being unlawfully composed of and connected with certain other lawless persons, citizens of the United States of America, being a foreign State, at peace with Her Majesty, for the purpose of making hostile incursions into Canada, and with the intent of levying war against her said Majesty, the Queen, therein, and that he, the said Patrick Boyle, hath joined himself to divers persons who have entered Canada with design and intent to commit felony within the same, and hath been guilty of treasonable practices in the city of Toronto, in said Province, contrary to the laws of the said Province and Dominion, and against the peace of our said Lady the Queen, her Crown and dignity:

"These are, therefore, to command you, the said constables, &c., to take the said Patrick Boyle, and him safely convey to the common gaol of the county of the city of Toronto, and there deliver him to the keeper thereof, together with this precept.

"And we hereby command you, the said Keeper of the said common gaol, to receive the said Patrick Boyle into your custody, in the said common gaol, and there safely keep him until he shall thence be delivered by due course of law; he being committed by us, as aforesaid, under and by virtue of a certain Act of the Legislature of the Dominion of Canada, known as "An Act to authorize the apprehension of such persons as shall be suspected of committing acts of hostility or conspiracy against her Majesty's person or Government."

"Given under our hands and seals, this fourth day of May, A. D., 1868, at the city of Toronto, aforesaid.

"(Signed),

"G. D'ARCY BOULTON. [L. s.]

"G. McMICKEN. J. P." [L. s.]

The prisoner denied, on affidavit, that he was or ever had been a member of the said Fenian society, or connected therewith, or with any secret society whatever.

The warrant and return being read and filed,