adjourn the cause to his Chambers and then and there adjourn the *further hearing* of said cause to his Chambers on Friday, 27th March, but the Court was not then adjourned by the said Judge, and other causes were afterwards, on the same day, immediately thereafter, called on and disposed of by the Judge in Court.

RICHARDS, C. J., delivered the judgment of the Court.

[After reviewing the authorities, the judgment continued.]

Here the affidavits are entitled, "In the Common Pleas. In the matter of a certain cause in the First Division Court for the County of Lennox and Addington, in which one Ezra A. Mallory is plaintiff, and one Barnabas Diamond is defendant."

After the decision of the Court of Queen's Bench, in *Hargreaves* v. *Hayes*, I think we cannot properly hold that the affidavits filed on moving the rule should be rejected. The decided opinion expressed by the majority of the Judges in that case, that the words there objected to would not prevent the affidavits being used as the foundation for an indictment for perjury, will apply in this case.

Some of the older cases say that the Court will not nicely weigh and discuss the question whether perjury will lie on an affidavit or not. If a party departs from the well-known established forms and rules as to entitling affidavits, the Court will reject them. Though inclined to think this is the safest, and perhaps best rule to abide by, yet I am not, as already intimated, prepared to reject these affidavits.

Then, as to the main question, whether the County Court Judge has so far departed from the proper usage and practice in relation to the proceedings in the Division Court that we must grant the prohibition now sought for, on the ground that his proceedings are entirely void.

No doubt, if he has acted beyond his jurisdiction we must interpose. It is indisputable in this matter that Judge Burrowes had jurisdiction over the subject matter of the claim between the parties in the Court below; that at the time the proceedings were instituted and the decision given by him he was the County Judge of the County within which the proceedings took place, and the whole adjudication and proceeding took place within the Division of the Court named of which he was the Judge; so that territorially, and in relation to the subject matter of the suit, he had jurisdiction; and up to the time of the adjournment of cause, on the 23rd of March, no objection can be taken to his proceedings. Let us see what took place then. On the 23rd of March he had heard all the witnessses that the parties were desirous of bringing before him. He called the plaintiff in the suit, who was not then present, whom he wished to examine under oath, and he then announced, in presence of the defendant, and his agent, who attended on his behalf, that he intended to adjourn the cause, and he did then and there "adjourn the further hearing of said cause to his Chambers, on Friday, the 27th day of March;" but the Court was not then adjourned. No objection was made at the time, or any dissent of any kind expressed to the proceedings. Defendant's agent thinks on 25th March he was notified by the plaintiff's agent that the Judge had further adjourned the hearing of the cause from the 27th of March to the 3rd of April, at the same place, and he advised defendant of this.

The further adjournment was caused by Mallory being obliged to attend at the Kingston Assizes as a witness. On Thursday, the 3rd of April, they all attended at the Judge's Chambers in the Court House, plaintiff and his agent, defendant and his agents, for he had in the meantime obtained the assistance of another professional gentleman of considerable eminence, Mr. Jellett, of Belleville. Mr. Mallory was examined by the Judge, and cross-examined by Mr. Jellett for the defendant. The Judge offered to swear the defendant, but he declined, saying Mr. Mallory's statement was correct. The agents and counsel for both parties then addressed the Judge.

The Judge stated he would consult the authorities, and give his judgment in writing on Tuesday, the 7th of April. To this no one objected.

The affidavits made by Mr. Diamond state that the Judge appointed Tuesday, the 7th of April, to deliver his judgment, but did not name any hour.

Mr. Preston, who acted as Diamond's agent, said the Judge appointed the following Tuesday, 7th April, to give his judgment in the said cause, in writing, at his Chambers aforesaid.

The first adjournment to the 27th March, made in open Court, in presence of the parties, is spoken of in the affidavits as adjourning the hearing of the cause to his Chambers. I presume he could have adjourned his Court to his Chambers. They were in the Court House, which was in the same village as the Town Hall where the Court was held, and I see no reason why he could not adjourn the Court, if he thought proper, to his Chambers, it being within the Division. We can suppose the Town Hall struck with lightning, and rendered incapable of being used; unless the Judge could adjourn the Court, the business could not go on. I see no good reason why he might not adjourn the Court and hold it in his Chambers, if need be, nor why he might not adjourn the hearing of a particular case to his Chambers, if it suited the convenience of all parties, and they did not object to it.

The 86th section of the statute refers to the Judge adjourning *the hearing of any cause* on such conditions as he may think fit, and for all practical purposes why may not that adjournment be held to constitute an adjournment of the Court as to that cause? The subsequent notice of a further adjournment to the 3rd of April being communicated to the parties, and virtually sanctioned by them by their attendance on that day, and without objection proceeding with the cause, seems to me to shew that all the parties interested considered *that* an adjournment of the Court for the purpose of going on with that cause, and they should not now be permitted to set up anything against that. If on the 3rd of April the defendant's counsel, whom he had probably brought there at considerable expense, had objected to the cause proceeding, because it had not been properly adjourned, the plaintiff could have discontinued his suit and brought another; but, when all parties viewed it as a proper adjournment at the time, they ought not to be allowed to allege anything to the contrary now.

As to *Smith* v. *Rooney* (12 U. C. Q. B. 661), to which reference has been made, under the