county of Leeds, have this day *been charged upon oath* before the undersigned, one of Her Majesty's Justices of the Peace in and for the said united counties," referring to the united counties of Frontenac and Lennox and Addington, in the margin of the warrant. If this statement be conclusive, because the warrant was put in by the plaintiff as part of his case, then it is needless to go further with this part of the case, because the plaintiff's objection that there was no charge in fact made, will have been repelled.

That it is evidence for the defendant is no doubt correct: *Haylock* v. *Sparke* (1 E. & B. 471); but how can it be said to be *conclusive* evidence of the truth of the fact? That would be to make the very ground of complaint against the magistrate a full and sufficient justification for his misconduct, and for the injury he had done to the plaintiff. The plaintiff's assertion is, that the warrant is false in fact; and the defendants' answer is, that although it be so, the plaintiff is not to be allowed to say so. This would be to carry the doctrine of estoppel to an alarming extent, if a warrant, which is not an adjudication or conviction, but a mere personal order of the magistrate to arrest the plaintiff, drawn up by himself, and upon his own individual responsibility, were to draw along with it the same incontrovertible verity which a record does, so long as it remains unimpeached.

No authority was cited for this position, and we can find none for it; and we think the law is quite favourable enough for the magistrate, by making it evidence, that is, *primâ facie* evidence, for him, and leaving it for the plaintiff to repel, if he can, this *primâ facie* case.

In *Leary* v. *Patrick* (15 Q. B. 272), where the conviction had been quashed, and did not recite that the magistrates had awarded costs, but they issued a distress warrant, which recited that they had adjudicated upon them, Lord Campbell, C. J., asked, "Was there any evidence that the justices did in fact ascertain the amount of the costs, except the recital in the distress warrant?" And he afterwards said: "The distress warrant recited an adjudication to pay costs, but that was contrary to the fact. The imprisonment and warrant and seizure are all defended on the ground that there was an adjudication to pay costs; and as there was no such adjudication, I think it is an illegal warrant, and that the imprisonment was wrongful, and the seizure of the goods an excess of jurisdiction."

The distress warrant, in that case, was entitled to as much faith and credit as the warrant in the present action: the one was not only tested by the conviction, but by the actual fact, apart from the conviction, whether such an adjudication had or had not been made; and the present warrant can be tested, also, by the alleged information, if there be one, or by the absence of one, if it be shown that there was not one in fact.

We think the plaintiff had the right in law to show there was no such charge made before the defendant Ferguson, as he had represented in his warrant; and we think it was proved, by reasonable evidence, at the trial, that no charge of any kind, verbal or in writing, on oath or without oath, had ever been made to the magistrate, as he has described in his warrant.

Then, as to the effect of acting without an information upon oath.

It appears that the law always required there should be an information: *Rex* v. *Fuller* (1 Ld. Ray. 509); and that in strict form it should have been in writing: *Brookshaw* v. *Hopkins* (Lofft. 240). In *Rex* v. *Birnie* (1 Moo. & Rob. 160) it was decided by Lord Tenterden, C. J., that magistrates had no right to detain a known person to answer a charge of misdemeanour verbally intimated to them, but without a regular information before them in their capacity of magistrates, that they may be able to judge whether it charges any offence to which the party ought to answer.

In the *King* v. *Wheatman*, (Dougl. 346,) Lord Mansfield, C. J., said, "The defendant can be convicted only of the charge in the information, and that must be sufficient to support the conviction;" and Ashurst, J., added, "The evidence must prove, but cannot supply any defects in the information."

In *Baxter* v. *Carew*, (3 B. & C. 649,) it was ruled that magistrates were not obliged to take an information upon oath, when the statute did not require they should do so.

In *Reg* v. *Millard*, (17 Jur. 400,) Parke, B., said, "No magistrate can proceed without an information; but unless the statute require that the information should be in writing, or on oath, it need not be so."

In *Caudle* v. *Ferguson*, (1 Q. B. 889,) where the clerk of the magistrate had taken the information in the absence of the magistrate, and the warrant to arrest did not recite any information, Lord Denman, C. J., said, "The warrant is clearly insufficient: it does not state any information on oath: the magistrate's jurisdiction depends not on jurisdiction over the subject matter, but over the individual arrested: to give him that jurisdiction, there should have been an information properly laid."

Coleridge, J., said: "It is true that a magistrate has jurisdiction over the offence in the abstract; but to give him jurisdiction in any particular case, it must be shown there was a proper charge upon oath in that case. A man, because he is a magistrate, has no right to order another to be taken for an offence over which he has jurisdiction, without a charge regularly made. The warrant does not state a charge, and the facts, independant of the warrant, do not shew such a charge on oath as justifies the defendant."

See also *The Queen* v. *The Justices of Buckinghamshire*, (3 Q. B. 807); *Haylock* v. *Sparkes* (1 E. & B. 485); 1 Wm. Saund. 262, note (1); and *Crepps* v. *Durden* (1 Smith's L. C. in the notes.)

These declarations of the law, coupled with the positive provisions of the statute, that an information in writing and on oath *shall* be laid before the magistrate, leave no doubt that it was not only the duty of the defendant Ferguson, but that he had not authority to issue his warrant for the arrest of the plaintiff, without such information having been first made to him.

The direction which the judge ought to give to the jury in an action against a justice, would be and should be to this effect, whether Ferguson honestly believed he was acting in the execution of his duty, as a magistrate, with respect to any matter within his jurisdiction—(see U. C. Act, ch. 126, sec. 1); or whether he honestly believed he was acting in the execution of his office,