that, upon the warrant of the convicting justices, who held commissions of the peace for the county of Durham, properly addressed to peace officers of that county, but not backed or indorsed by a justice of the peace for the county of Ontario, as provided by sec. 844 of the Criminal Code, the defendant was unlawfully arrested in the latter county, whence he was unlawfully conveyed to the gaol at Cobourg. This warrant the keeper of that gaol returned with the writ. It was not backed or indorsed by any justice of the peace for the county of Ontario. The fact of the prisoner's arrest at Oshawa, in Ontario county, was shewn by his own affidavit filed on the motion for the writ and was not controverted.

J. R. Cartwright, K.C., for the Crown.

ANGLIN, J.—On behalf of the Crown, exception is taken to the use of the prisoner's affidavit. I think it is admissible. It does not contradict the return, even if that would be a sufficient reason for excluding it. See Regina v. Boyle, 4 P. R. 256; Paley on Convictions, 7th ed., p. 346. Section 4 of the Habeas Corpus Act, R. S. O. 1897 ch. 83, seems to put this beyond doubt.

Before the provision now made by sec. 844 of the Criminal Code for the backing of warrants issued after summary convictions, Mr. Justice Robertson, in Regina v. Jones, 8 C. L. T. Occ. N. 332, held that such a warrant of commitment in execution could not be backed by a justice of the peace for another county, and, upon habeas corpus, he ordered the discharge from the custody of the keeper of the gaol at Brantford of a prisoner arrested in Haldimand county, upon a warrant issued by the police magistrate for the county of Brant, and indorsed by a justice of the peace for the county of Haldimand. This authority would support the present application. It is very meagrely reported in the Canadian Law Times, and not elsewhere. I have seen the note book of the learned Judge, which contains the memorandum of this judgment upon which the note in the Law Times is founded. While not throwing further light upon the reasons for the conclusions reached, the learned Judge's notes of the argument make it quite apparent that the authorities in point were not cited to him, and the distinction between detention in execution under sentence for a criminal offence and detention under civil process was not called to his attention. Neither was the Attorney-General represented upon the motion.

That such an arrest is illegal, and may give to the defendant a right to redress in proper proceedings may for the present be assumed: Reid v. Maybee, 31 C. P. 392; South-