which recites a charge on oath made before the justice the day it is dated.

I regret that I have not been able to consult all the cases Mr McCarthy for the plaintiff referred to at the argument, particularly one in the Irish Reports, but it is satisfactory to know that whatever my decision, one party or the other is to take the opinion of the superior courts. I confess I am somewhat shaken in the strong opinion I expressed at the trial that the magistrate was acting within his jurisdiction, yet, as at present advised, I cannot say that the act done, as presented by the evidence, can by no possibility be justified under the general power of a justice of the peace,—that it was one in which the defendant acted without jurisdiction. I am alive to the dangerous consequences of any departure by magistrates from the settled practice, yet what passed at the examination we do not know. The fact only is in evidence that the plaintiff was examined by the defendant before he made out the commitment and that the plaintiff did not ask for a hearing or investigation when defendant said he should commit him. If it was a fact that the plaintiff (as is sometimes done in police courts) waived a hearing and investigation, I presume the defendant could have put it in evidence. As it is, there is the mere naked fact, that he was examined.

In the other courts there is the usual allegation of malice and want of probable cause. With the facts just stated before me, I conceived there was no evidence of the want of reasonable and probable cause, for there was an information on oath, a charge of larceny, an examination of the plaintiff, the stolen article found in his possession, and the fact that the plaintiff and defendant never met before and were perfect strangers to each other, and an apparent assent, at all events no objection, to the commitment without the preliminary investigation. I therefore withdrew the case from the jury. The indictment with the minute of not guilty endorsed was put in, but the fact of guilty or not guilty is not a criterion as to reasonable or probable cause; and it may have been that the judge who tried the charge would not have disturbed the finding if the verdict had been guilty, the facts and circumstances bearing against the prisoner, or it may have been otherwise; but the simple fact of not guilty does not shew of itself want of reasonable cause. I do not think there was anything in the evidence from which to conclude that the magistrate had any other motive than simply to bring the plaintiff to justice in the exercise of his office.

The rule *nisi* granted is discharged with costs.

From this judgment the plaintiff appealed.

McCarthy, for the appellant, cited *Scavage* v. *Tutcham*, Cro Eliz. 829; *Edwards* v *Ferris*, 7 C. & P 542; *Haylocke* v. *Sparke*, 1 E. & B 471; *McCreary* v *Bettis*, 14 U. C. C. P. 95; *Gardner* v. *Burwell*, Tay. Rep 247; *Lawrenson* v. *Hill*, 10 Ir. C L. Rep. 177; *Bott* v. *Ackroyd*, 28 L. J. M. C. 297, 5 Jur. N. S. 1053, 7 W. R. 420.

W. H Burns, contra, cited *Haacke* v. *Adamson*, 14 U C. C. P. 201; *Fawcett* v. *Fowlis*, 7 B. & C. 394; *Morgan* v. *Hughes*, 2 T. R 225; *Bonnell* v. *Brighton*, 5 T. R. 186; *Warne* v. *Varley*, 6 T. R. 449; *Ex parte Thompson*, 3 L T. Rep. N S. 294.

HAGARTY, J, delivered the judgment of the court.

It may be well to notice a few of the cases that seem most in point

Edwards v. *Ferris* (7 C & P 542), where the defendant meeting two constables in the street with the plaintiff, in charge for drunkenness, verbally told them to take him to the lock-up, and bring him up next day. Patteson, J., said, "It is a magistrate's duty on all occasions either to examine into the question, or if there is a reason why he cannot examine into it, he is not to interfere at all, and he should let the constable take the party somewhere else." The magistrate was held liable in trespass.

Davis v. *Capper* (10 B. & C. 28) is a very important case. A magistrate, before whom the plaintiff was legally brought on a regular information, remanded her for a fortnight. Trespass was brought. The jury found the commitment was *bonâ fide*, and without improper motive, but that the the time for which the commitment was made was unreasonable. Lord Tenterden, giving judgment (page 38), held that trespass, not case, was the proper remedy: "A special action on the case could not have been maintained, because that must be founded on some improper motive which the jury have negatived. And whether we consider this commitment is absolutely void from the beginning, as being for an unreasonable time, or consider it void *pro tanto*, i e, for so much of the time as was unreasonable, still an action of trespass would be maintained, because every continuance of a party in custody is a new imprisonment and a new trespass * * The duty of a magistrate is to commit for a reasonable time, and if he commits for an unreasonable time, he does an act which he is not authorised by law to do. In the case of *Rex* v. *Gooding* (Burn's Justice, 24th edition, vol. i., p. 1009) the judges were of opinion that a party so committed was not in lawful custody, and therefore that another who had aided such person in escaping from prison was not guilty of any offence against the law."

Section 30 of chapter 102, Consol. Stats. C., directs that where a person appears, or is brought before any justice, charged with any indictable offence, "such justice or justices before he or they commit such accused person to prison for trial, or before he or they admit him to bail, shall, in presence of such accused persons (who shall be at liberty to put questions to any witness produced against him) take the statement on oath or affirmation of those who know the facts and circumstances of the case, and shall put the same in writing, and such disposition shall be read over," &c, &c.

Section 32 provides that after all witnesses are examined the justice of the peace shall read the deposition of the accused, and ask him if he has anything to say, &c

Section 42 allows a remand for a reasonable time, not exceeding eight days.

Section 57 directs commitment after all evidence is heard, when strong presumption of guilt arises.

In *Lawrenson* v. *Hill* (10 Ir. C. L. Rep. 183) Pigot, C. B., says, "The duty of a magistrate, in dealing with a party charged with a criminal offence, is prescribed by 14 & 15 Vic, ch 93 He is bound, before he commits for trial, among other matters, to take down the evidence against the accused in the shape of a written deposition on oath This is no new law. It has been, as to felony, the law in England since 2 & 3 Ph. & M ch. 10. * * "If (p. 191) the evidence at the trial established that he acted in a manner in which he had not jurisdiction, or in which he exceeded his jurisdiction, then he did not issue the warrant in the due execution of his duty. * * The question (p. 186) is, whether, with a view to the application of the second section of the statute, (the protection of Magistrates' Act) the matter in which the defendant acted is to be considered as consisting of the whole transaction of the enquiry before him, in which he had a general jurisdiction to commit for felony, or as consisting of the act of issuing the warrant for the plaintiff's arrest, which was done without or in excess of jurisdiction, and upon authority, as well as upon the reason of the thing, in my judgment the latter is the proper mode of treating the matter in question."

The words of the act of Philip and Mary, sec. 2, are, "Such justice or justices, before whom any person shall be brought for manslaughter or felony, or for suspicion thereof, before he or they shall commit or send such prisoner to ward, shall take the examination of such prisoner, and information of those that bring him," &c, &c.

The case of *Barton* v. *Bricknell* (13 Q B 392) has a most important bearing The justice had convicted the plaintiff for Sunday trading in a penalty and costs, with an alternative that the plaintiff should be put in the stocks for two hours, if penalty and costs were not sooner paid. The plaintiff's goods were seized on the conviction, which was afterwards quashed, and trespass brought against the defendant.

Coleridge, J., after complaining of the faulty wording of the statute, and the apparent contradiction of the first and second sections, says, "We must then try to construe them so as to give effect to the whole of the act; and I think we do this if we confine sec 2 to cases *in which the act by which the plaintiff is injured* is an act in excess of jurisdiction, for instance, if the plaintiff in the present case had been put in stocks under the illegal alternative, and the action had been brought for that, in which case, probably, trespass might have lain."

Erle, J., says, "The justice had jurisdiction to convict, and to order payment of the penalty and costs, and to levy them by