

arrest of plaintiff—who was accordingly arrested upon it, and that illegally.

*Held*, also, that the effect of this evidence was not destroyed by the fact, that the arrest was made in another county and under the authority of another magistrate's endorsement upon the warrant; for that that endorsement was not strictly the authority to arrest, but merely to execute the original warrant; and that the arrest was wrongful, not from the endorsement, but from the antecedent illegal proceedings of the defendants; and that the defendant who issued the warrant was as much responsible as if the arrest had been made in his own county.

*Semble*, 1. That if it had appeared that defendant who issued the warrant, was liable in case only, and malice or some special kind, personal to himself, in which his co-defendant was not, and could not be a partaker, had been proved, a joint action would not lie against both. 2. That one defendant might have been convicted in trespass, and the other in case.

[C. P., T. 1., 1865.]

This was an action for arrest and malicious prosecution.

The first count was in trespass for the arrest, and for delivering the plaintiff to a constable, who kept him in custody for ten days.

The second count was in case, for maliciously and without reasonable cause procuring the plaintiff to be arrested and imprisoned in the custody of a constable for the space of five days, on a charge of felony.

The defendant Ferguson in person, and Collinson by Ferguson, his attorney, pleaded, severally, Not guilty by statute.

The venue was laid in the county of Leeds, one of the United Counties of Leeds and Grenville.

The trial took place before Morrison J., at the last Brockville Assizes, and a verdict was rendered for the plaintiff for \$300 damages.

The following facts appeared: That Ferguson was an attorney, and was Reeve of the township of Pittsburgh, in the county of Frontenac, where the warrant afterwards mentioned issued; that the plaintiff brought an action for the seduction of his daughter against Collinson; that Collinson on the 7th of July, 1864, asked one P. H. Russel to go from Leeds to Kingston, and paid Russel \$2 for going with him; that Collinson and Russel went together to Ferguson's office, when Ferguson asked Russel about some tea-meeting tickets; that they afterwards talked about forged notes; that they wanted Russel to be a complainant against plaintiff, but he would not; that Ferguson wrote a paper, and Collinson got it, but Russel had nothing to do with it, the first that Russel knew of the issuing of a warrant against the plaintiff being, when he was summoned by Collinson to attend before Mr. Moulton, a magistrate, at the township of Leeds, to give evidence against the plaintiff, who was then in the custody of a constable; that Collinson got a warrant from Ferguson against the plaintiff and gave it to Mr. Moulton, and another paper also, which appeared to the latter to be an information with Russel's name in the body of it, and which was handed back to Collinson again, who took it away; that Moulton backed the warrant to Collinson, and gave it to him; and that Collinson afterwards told the magistrate that the plaintiff had been arrested, and he got summonses for the witnesses to attend and give evidence against the plaintiff; that Moulton, when the plaintiff was brought before him, took the depositions of the witnesses, and after doing so he told the plaintiff he saw nothing against him, but as the warrant came from another county he could not discharge him; that Collinson had the warrant, and the

magistrate sent the plaintiff to the defendant, Ferguson, at Kingston, in charge of the constable; that the plaintiff, when taken by the constable to Ferguson, was sent back by Ferguson to Moulton at Leeds; that Ferguson said to the constable he could not act on the depositions taken by Moulton, whereupon the plaintiff was conveyed by the constable to Leeds; that Moulton could not be found for two days, and on the third day, when he was found, he discharged the plaintiff.

The general facts, therefore, seem to be, that Collinson, having been sued by the plaintiff for the seduction of plaintiff's daughter, procured a warrant from his co-defendant, Ferguson, in the city of Kingston, while Ferguson was a magistrate only by virtue of his office as Reeve of the township of Pittsburgh, against the plaintiff upon a charge of forgery, without any complaint or information having been made by any one to authorize the issuing of the warrant. Upon the warrant the plaintiff was arrested in Leeds, and after an examination there he was sent by Moulton, the magistrate at Leeds, in charge of a constable, to Ferguson at Kingston; then sent back again by Ferguson to Leeds; and, after several days, he was finally discharged by the magistrate, because there was no case against him.

There can be no doubt that this was a most wanton and malicious proceeding by Collinson against the plaintiff, and that he prosecuted the plaintiff, as suggested, for the purpose of compelling him to drop, or to arrange on some kind of favorable terms the action for seduction, which the plaintiff had then pending against him.

As to Ferguson, the only facts against him are that he had no authority, as a magistrate, in the city of Kingston, for he was not a magistrate of the city, but of the county of Frontenac, by reason of his official position as Reeve of Pittsburgh, and that he issued the warrant without any charge or information having been first made, he being the attorney for Collinson in the action for seduction.

At the close of the plaintiff's case several objections were taken, which were for the time overruled, and leave was reserved to the defendant, Ferguson, to move to enter a verdict for him, if the court should think a notice of action to have been necessary, and that the one served upon him was defective.

In Easter Term following, *Gwynne*, Q. C., obtained a rule *nisi* calling upon the plaintiff to shew cause why a nonsuit should not be entered in favour of the defendant, Ferguson, in pursuance of leave reserved at the trial, for want of proof of sufficient notice of action; or why a new trial should not be had by Collinson, or by both the defendants, without costs, on the following grounds:—

1. That the declaration, containing two counts, one in trespass and the other in case, and the verdict being rendered generally, the verdict was contrary to law.

2. That the learned judge, who tried the cause, erroneously received evidence for the plaintiff under the count in trespass and under the count in case, and submitted all such evidence to the jury; and that such reception of evidence and