the plaintiff to gaol, and the gaoler to receive and keep him until delivered by due course of law. On this the plaintiff was sent to gaol; and an indictment, with verdict of not guilty endorsed at the Quarter Sessions, was proved

On objection taken that defendant acted within his jurisdiction, the learned judge held that trespass would not lie, and that there was no evidence of want of reasonable and probable cause on the other counts; and a nonsuit was entered. In the following term a rule to set it aside was obtained in the court below, and after argument the following judgment was there given.

Gowan, Co. J —The evidence for the plaintiff on the trial disclosed substantially the following facts:—

That on the 6th of November last, the plaintiff was arrested by a constable under a warrant, (produced, but not put in) stated to have been issued by the defendant, as a justice of the peace, the charge being for stealing a chain from one Hall: that on the same day the constable brought the plaintiff before the defendant at the latter's house, in Medonte:—

That Hall (the alleged prosecutor) was not present at the time, nor was any person sworn or examined as a witness, so far as appeared in evidence from the witnesses: that the defendant examined the plaintiff in respect to the charge (how or in what way did not appear); that after such examination the defendant said he could not take bail in such a matter; but the plaintiff did not ask to have any hearing or investigation, or produce or offer to procure any evidence on his behalf, or to give bail to the charge: and that after the examination the defendant made out a warrant of commitment, which was produced and proved, and delivered it to the constable, and he in execution of it lodged the plaintiff in the county gaol:

That the plaintiff and defendant were strangers to each other.

The first count in the declaration, upon which the plaintiff mainly relied, does not allege that the act complained of was done maliciously, &c.

At the close of the plaintiff's case it appeared to me that the defendant, a justice of the peace, although his proceeding was most irregular, could not be said to have been acting without jurisdiction, and that therefore the action of trespass was barred by the 1st section of ch 126, Consol. Stats. U. C., the defendant having pleaded the general issue by statute to the declaration.

In the other counts want of reasonable and probable cause "&c" was alleged, and this allegation I thought the plaintiff had failed to shew; and I nonsuited the plaintiff.

If the act done by the justice was in a matter in which by law he had not jurisdiction, or exceeded his jurisdiction, (under the second section of the act,) the nonsuit was improperly directed, and I should have allowed the case to go to the jury; and in this lies the main question.

As observed by Parke, B., in *Calder* v. *Halket* (3 Moo. P. C. C 76) a judge has an immunity in respect of any act of a judicial nature within the general scope of his jurisdiction, and whether there was any irregularity or error in it or not, would be dispunishable by ordinary process of law; and the principles laid down in relation to judicial officers are not without application to magistrates. At all events the object of the Magistrates' Act is obviously to give magistrates entire protection in regard to acts, however irregular, if within their jurisdiction, unless done maliciously and without reasonable or probable cause. The learned judge also referred to *Dosewell* v. *Impey*, 1 B. & C. 169; *Dicas* v. *Brougham*, 6 C. & P. 249. 1 Moo & Rob. 309; *Mills* v. *Collett*, 6 Bing. 85; *Somerville* v. *Mirehouse et al*, 9 W. R. 53, 3 L T. Rep. N. S. 294; *Houlden* v. *Smith*, 14 Q. B. 841, (in which most of the authorities are referred to): *Ex parte Thompson*, 3 L. T. Rep. N. S. 294; *Kendall* v. *Wilkinson*, 4 E & B. 680.

Under the commission of the peace, justices have a general power for conservation of the peace, and the apprehension and commitment of felons.

The commission gives them jurisdiction in all indictable offences to discharge, admit to bail, or commit for trial.

Persons apprehended for offences that are not bailable, and persons who neglect to offer bail for offences which are bailable, must be committed (Hawk P. C., Book 2, ch. 16, sec 1). Where the accused is brought before a magistrate, it becomes his duty to take and complete the examination of all concerned, and to discharge or commit the individual suspected, as soon as the nature of the case will permit (Chit Crim. Law, vol i., p 73).

The mode of taking examination was regulated by the act of 2 Ph. and M., ch. 10, and at the present day by the English act 16 Vic., ch. 179, from which act our statute ch 102, Consol. Stats. C is taken, and now regulates the duties of justices out of sessions, in respect to indictable offences.

The warrant under which the plaintiff was imprisoned, regular on its face, and in the form given by ch. 102, states that the plaintiff was charged before the defendant, a justice of the peace, on the oath of Wm. Hall, for that the said James Connors did, on or about the first day of October last, steal and theftuously carry away from the possession of the said Hall, in the county of Simcoe, a chain, and that the said chain was found in the plaintiff's possession, &c.

Upon the authority of *Haylocke* v. *Sparke* (18 Eng L & E Rep. 269, 1 E. & B 471) the warrant put in by the plaintiff is evidence for the defendant of the facts recited.

What does it shew in respect of jurisdiction?

I collect from it that the defendant, a justice of the peace, acted on a charge upon oath before him by the owner of property; that the charge was against the plaintiff for stealing, and from a place within the county, and that the stolen article was found in his possession; and that upon this charge the defendant was committed for trial, the evidence of the constable shewing that the party was previously brought up on a warrant for the charge, and examined. I assume the offence as stated in the warrant shows an indictable offence. At all events no objection was taken on this head, and if defective in technical accuracy no objection would probably lie. (See secs. 16 and 22, ch 102, Consol. Stats. C.; *Rex* v. *Judd*, 2 T. R. 255; *Rex* v. *Croker*, 2 Chit. 138, 18 Eng. C. L Rep., 279.)

How then does the matter stand? Larceny (stealing) is an offence within the jurisdiction of a justice of the peace, and upon which he may commit for trial. It is charged as done within the local jurisdiction. It is charged upon oath. The party (plaintiff) was before the justice. Can it be said, then, that the defendant, in granting the warrant, was acting without power, when as respects subject matter, place and person, he had a general jurisdiction to deal with the charge? The defendant decides to commit the plaintiff for trial after examining him. In doing so without observing the statutory directions as to examination, he committed a great error, a gross irregularity, but I think he cannot be held responsible for this wrong decision, the matter being one over which he had a general jurisdiction. Such presumption as might arise in the poverty of facts in evidence, would not be against the magistrate.

According to the warrant, oath of the offence was made the day it was granted, defendant had power to enter on the case: surely an erroneous decision cannot strip him of authority. If he mistook the law, does he lose jurisdiction?

If the plaintiff desired an investigation, why did he not ask it. Is there not a waiver by him in some sort of an enquiry?

It is urged that the provisions in secs. 30, 31 and 32, of ch. 102, Consol. Stat. C., not having been pursued, the defendant had no jurisdiction, and secs. 52 and 57 are referred to in this connection. I cannot think the failure to follow the procedure prescribed in respect to examination takes away jurisdiction, though the magistrate might be otherwise punishable for not following the directions of the statute. If the argument were pushed, it might be contended that any departure from the practice laid down would make the justice a trespasser.

I am referred to several cases where magistrates were held liable for committing a party on remand for an unreasonable time, but no case I have examined seems to touch the question whether gross irregularity and disregard of the statutory directions in the particulars referred to leaves a magistrate entirely without jurisdiction. I have some doubt whether a warrant to answer is not spent when the accused is brought before a justice of the peace, and whether something more than there is evidence of having taken place may not be necessary to give the justice jurisdiction over the person of the plaintiff, but I do not see that I am bound to presume there was nothing done, in the face of the warrant,