

then and there preferred against him, after the plaintiff had been legally acquitted of the same by a bench of magistrates then and there having jurisdiction in the premises, and afterwards falsely and maliciously, and without reasonable or probable cause, did as such justice issue his warrant, and caused the plaintiff to be arrested and imprisoned in the common gaol for twenty days.

Plea—Not guilty, by statute. Consol. Stat. U.C. ch. 126, cases. 1, 9, 10 & 11.

The case was tried at Guelph, in March, 1866, before *Richards, C. J.*

The notice of action was produced, and service of it was admitted. It was headed "To John Alexander McMillan, of the village of Fergus, in the county of Wellington, one of Her Majesty's justices of the peace in and for the said county of Wellington," and was signed "James Fletcher Cross, of Prince of Wales' Block, St. Andrew's Street in the village of Fergus, in the county of Wellington, attorney for the said James Neill, of the township of Garafraxa, in the county of Wellington, laborer."

Evidence was given that one James G. Allan had, on the 19th of June, 1865, made a complaint before defendant against the plaintiff for having, while under hire to him as a servant for a term, ending on the 1st of January, 1867, on the 17th June left his employment and refused to return. On this the defendant issued a warrant to apprehend the plaintiff and bring him before defendant or some one or more of the justices of the peace for the said county. On this warrant the plaintiff was arrested on the following morning, and was brought before the defendant and three other justices of the peace, namely, Messrs. Cattannach, Cull, and Munger. Allan and a person named Smith gave evidence, the substance of which was written down by defendant. His written statements were produced. After hearing the evidence the justices consulted together, and the defendant further wrote as follows; "Ordered that the case be dismissed with costs; and on the vote being taken there were for the dismissal of the case

"James Cattannach, J. P., moves,
"George Munger, J. P., seconds,
"Henry Cull, J. P., voting for,
"John A. McMillan, J. J., dissenting."

The three former justices were called as witnesses, and all agreed that this was a true statement of what occurred. They also stated in effect that after this was so entered the defendant said he thought they had come to a wrong decision, and that if a similar case were brought under his consideration, and there were twenty magistrates sitting, he would take the matter in his own hands, and act upon his own opinion independent of their judgment. One or two of the justices, said to him, "If it is your intention to do so in future, you can do so at present," and defendant asked if they would give him their consent in writing to dispose of the case as he thought fit. They refused, one of them saying they had already disposed of it. The room had been cleared of all persons but the justices when they began to consult, and while this discussion was going on defendant was still waiting. The other persons were then called in, and defendant read over the decision which had been come to by the three, and then read further, as follows: "But after the matter had been further talked over, James Cattannach, J. P., and Henry Cull,

J. P., gave their consent to allow John A. McMillan, the presiding magistrate in the case, liberty to decide in accordance with his own judgment in the matter *Allan in re Neill*; and it is thereby ordered that the defendant pay a fine of one dollar and the costs, amounting to six dollars, forthwith, or in default to be imprisoned in the common gaol at Guelph for the space of twenty days, and that he, the said James Neill, is still a servant of the complainant James Allan."

"(Signed) JOHN A. McMILLAN, J. P."

The others on hearing this objected, saying that was not their decision: that the decision was that the case was dismissed. Defendant replied, "Too late," that the court was dismissed; and he picked up the minute book and the statutes, and left the room.

The constable said he had the plaintiff in charge on the first warrant until he got a second, dated the 20th of June, on which he arrested the plaintiff and took him to gaol. This second warrant was issued by defendant under his hand and seal. Defendant told the constable as he left the room after reading the decision that he gave the plaintiff three hours to pay the money, and the constable was to keep him in charge.

It was proved that Garafraxa is one of the largest townships from east to west of any in Canada, being about twenty miles long and contains several villages.

It further appeared that on the 22nd of June the defendant was served with notice that the plaintiff appealed against this conviction, and an order under the seal of the Court of Quarter Sessions, and signed by the clerk of the peace, was produced. It was as follows:

"In the Court of General Quarter Sessions of the Peace for the County of Wellington. On the twelfth day of September, in the year A.D., 1865.

"James Gibbie Allan against James Neill. On the case being called, and notice of appeal proved and heard, it was ordered by the court that the conviction of James Neill be quashed, with costs.

"[Seal] (Signed) THOMAS SAUNDERS,
"Clerk of the Peace.

"Office of the Clerk of the Peace, Guelph, March 19, 1866.

The clerk of the peace also produced the minute book of entry of proceedings at the Court of Quarter Sessions on the 12th of September, 1865. The following is a copy:

"In the Court of Quarter Sessions for the county of Wellington. At a general Court of Quarter Sessions of the Peace for the county of Wellington, held at Guelph on Tuesday the 12th day of September, in the year of our Lord one thousand eight hundred and sixty-five, pursuant to statute.

"Present, Archibald McDonald, Esq., County Court Judge, chairman, James Hough, David Allan, John Beattie, James Loughrem, Esquires, justices of the peace for the county of Wellington.

"The following appeal was entered: James Gibbie Allan against James Neill, Master and Servants Act. James Neill appellant.

"The service of notice of appeal was admitted. The order of court was, that the conviction of James Neill be quashed with costs.

"THOMAS SAUNDERS, Clerk of the Peace."