

STREET, J.—The defendant, having merely stated the facts of the case to the magistrate, and having stated them fairly, was not liable for the erroneous view of the magistrate that he had jurisdiction to issue a search warrant, nor for the subsequent action of the magistrate in summoning plaintiff before him in order apparently to dispose of the question as to the property in the dog. But when the proceedings began before the magistrate the plaintiff's counsel pointed out that no criminal offence was charged, and that the magistrate had therefore no jurisdiction; and there is evidence that defendant assented to the alteration in the information which then distinctly charged plaintiff with theft, and to the prosecution of plaintiff upon that charge. The real question in the action was not whether defendant believed that the dog was his, but whether he believed that plaintiff had stolen him, that is to say, had taken him without any belief that he had a right to take him. The trial Judge should have left the case to the jury, telling them that, if they found that defendant had authorized the charge of theft, and if he honestly believed, at the time of the hearing before the magistrate when the information was amended, that plaintiff had stolen the dog, they should find for defendant; otherwise, they should find for plaintiff. The case should not have been taken from the jury, under the circumstances, upon the ground that reasonable and probable cause for a criminal prosecution had been shewn: *Brown v. Hawkes*, [1901] 2 Q. B. 718; *Munroe v. Abbott*, 39 U. C. R. 83; *Macdonald v. Henwood*, 32 C. P. 433; *Patterson v. Scott*, 38 U. C. R. 642; *Grimes v. Miller*, 23 A. R. 764.

Appeal allowed with costs and new trial ordered. Costs of former trial to plaintiff in any event.

APRIL 11TH, 1903.

DIVISIONAL COURT.

WEBB v. CANADIAN GENERAL ELECTRIC CO.

*Master and Servant—Injury to Servant—Workmen's Compensation Act — Negligence of Fellow Servant — Person Intrusted with Superintendence—Evidence for Jury.*

Motion by plaintiff to set aside the nonsuit by MEREDITH, J., at the trial at Peterborough, and for a new trial, in an action under the Workmen's Compensation Act. According to plaintiff's evidence, he was working in a narrow trench, with a wall on one side and a line of rails on the other, in a building of defendants. The line of rails passed through the building from east to west, and connected a building to the east, in which material was kept, with other buildings to