

should have judgment with costs for the balance in his favour, the costs to be set off.

C. R. Smith, K.C., for plaintiff. T. S. Rogers and S. Jenks, for defendant.

Graham, E.J.]

MATHESON v. REID.

[Jan. 24

Constable—Arrest—Justification under warrant—Abandonment of levy—Estoppel—Costs.

Defendant, a constable, levied under a warrant upon a number of articles in satisfaction of a sectional school rate due by plaintiff, but subsequently returned the articles taken upon demand by plaintiff's solicitors claiming that they were unlawfully taken, and giving notice of action for a return of the property taken and for damages in default of their immediate delivery. Defendant afterwards made affidavit that he was unable to find goods sufficient to satisfy the warrant and a justice of the peace, thereupon, under R.S. 1900, c. 73, s. 83, issued a warrant against plaintiff authorizing defendant to levy upon the goods and chattels of plaintiff for the amount due and in default of goods to take the body. Defendant made a further demand and failing to obtain goods arrested plaintiff and conveyed him to jail. Plaintiff brought an action for assault and imprisonment, but just before the trial amended by adding paragraphs claiming damages for trespass in connection with the taking of the goods levied upon and returned, and for other alleged acts of trespass, etc.

Held, 1. So far as the arrest and imprisonment were concerned defendant was protected by the warrant.

2. The levy made having been abandoned and the goods restored, there was not such a satisfaction of the claim as would prevent the subsequent issue of and the arrest under the individual warrant.

But *semble*, that plaintiff having demanded and received back the goods as unlawfully taken would be estopped from saying that a levy had been made which barred a subsequent levy and arrest.

Held, that defendant having returned the goods on the assumption that they were unlawfully taken was liable in damages for the taking and detention (assessed at \$1), but as he was entitled up to the time of the amendment to have the action dis-