

creditors was not to be construed as an admission of liability, it having been used in relation to creditors of A.H.

3. The evidence as a whole shewing that the credit was given to A. H. and not to the defendant, and there being nothing to justify the trial judge in holding that the terms of the power of attorney had been enlarged, the defendant's appeal should be allowed with costs, and judgment entered for defendant with costs.

*F. B. Wade*, Q.C., for appellant. *Jas. A. McLean*, Q.C., for respondent.

Full Court.]

MOTT v. MYLNE.

[Nov. 15, 1898.

*Justice of the peace—Issuing warrant for arrest without jurisdiction—Notice under R.S. c. 104—Bona fide belief in legal authority.*

The defendant M. laid an information before the defendant J., a justice of the peace, charging plaintiff with obtaining from him a suit of clothes for one W. under the false pretence that she would pay for the same the following week. The information having been sworn to, J. issued a warrant under which plaintiff was arrested. In an action brought by plaintiff claiming damages for false arrest, the trial judge gave judgment in favour of the defendant J. on the ground that the notice of action given under R.S. c. 104 was defective, on account of failure to state the place at which the offence was committed.

*Held*, per RITCHIE, J., McDONALD, C.J., concurring. (1) The representation that plaintiff would pay for the clothes the following week was not the representation of a fact, either past or present, within the meaning of the Code.

2. As the information did not allege that plaintiff had been guilty of any crime, the arrest was illegal and made without any authority.

3. The older cases as to notice to a justice has been modified by more recent decisions, and the test now is whether or not the magistrate bona fide believes in the existence of facts, which, if they existed, would give him jurisdiction.

4. Admitting that the magistrate in the present case was acting bona fide, and believed he had jurisdiction, no circumstances were brought to his notice which if true would give him jurisdiction, and his belief on the subject was without ground on which it could be based, and was unreasonable.

Per HENRY, J., GRAHAM, E.J., concurring. The justice having acted with some colour of reason, and with a bona fide belief that he was acting in pursuance of his legal authority, he was entitled to protection, although he may have proceeded illegally or in excess of his jurisdiction.

*Laurence*, Q.C., for appellant. *H. A. Lovett* for respondent.