

By the 2nd section of chap. 126, Con. Stats. U. C., it is enacted, among other things, that "for any act done under any conviction, or order made, or warrant issued by such justice in any such matter"—that is, a matter of which by law he has not jurisdiction, or in which he has exceeded his jurisdiction—"any person injured thereby may maintain an action against such justice in the same form and in the same case as he might have done before the passing of this act," but by sec. 3 not "until the conviction or order has been quashed."

The first count is in trespass, under the second section, treating the act of the magistrates as without or in excess of their jurisdiction. The second count is founded on the first section of the statute, treating the act as done in the execution of their duty as justices with respect to a matter within their jurisdiction.

The evidence shows only one state of facts and one act of imprisonment for which the plaintiff complains, and it will sustain either count, depending on the question whether the defendants had jurisdiction, and if so, whether they acted maliciously and without reasonable or probable cause, or whether they had no jurisdiction, or having jurisdiction acted in excess of it.

It appears to us immaterial to the plaintiff's right of recovery upon which count he enters his judgment *Friel v. Ferguson*, 15 U.C.C.P. 584. The general verdict on the two counts creates no legal objection. We think the evidence abundantly sustains the second count, and I incline to the opinion that on the whole facts it might be held that there was jurisdiction *prima facie* till the facts appeared. Mr. Anderson cited *Haylock v. Sparke*, 1 E. & B. 471. In regard to that case, Lord Wensleydale in *McMahon v. Lennard*, 6 H. L. Cas. 1012 observed that case was not satisfactorily distinguished from *White v. Morris* 11 C. B. 1015 and is not to be preferred to it.

Then as to damages, two points are made: 1st, As to the jury having given several damages; 2nd, As to the direction to the jury that they might give damages *in penam*, to teach the defendants not to abuse their position or authority. The question of excessive damages was also raised, but as in our view the verdict cannot be treated as other than a verdict of \$800, we cannot say that, after going carefully through the evidence, we have arrived at the conclusion that it is so grossly extravagant as to justify interference on that ground. The plaintiff might of course take the lesser verdict against both defendants.

We have not found any case in which the judgment in *Hill v. Goodchild* 5 Burr. 2790 has been doubted or denied. Lord Mansfield states that where a trespass is *jointly* charged upon all the defendants, and the verdict has found them *jointly* guilty, the jury cannot assess *several* damages. His lordship confines the judgment to the particular case, pointing out that the court was not called upon to decide as to cases where the defendants were charged severally, or had severally in their pleading, or were found guilty of *several* parts of the same trespass.

The doubt thrown out in *Gregory v. Slowman* upon one of the cases left undecided by Lord Mansfield, the defendants

having taken different parts in the transaction, and the defendant Slowman having pleaded a separate defence from the others.

The cases prior to *Hill v. Goodchild* are not to be reconciled. For example, in *Lane v. Santeloe* 1 Str. 79, Parker, C. J., allowed the jury to give £200 against one defendant and £20 against another; while in *Lowfield v. Bancroft* 2 Str. 910, Lord Raymond held the jury could not sever the damages. In *Chapman v. House* 2 Str. 1140, Lee, C. J., held the jury might sever, as the defendants had not pleaded jointly. In *Clark v. Newman et al.* 1 Ex. 131 the rule was stated, that the true criterion is the whole injury which the plaintiff has sustained from the *joint act of trespass*: that when the defendants have so conducted themselves as to be liable to be jointly sued, they are responsible for the injury sustained by the common act. And the direction to the jury given by Tindal, C. J., in *Elliot v. Allen* 1 C. B. 18, is in accordance with this criterion. He charged, and the court sustained him, that the plaintiff could only recover damages against all the defendants jointly in any joint act of trespass committed or assented to by them all. The principle is further illustrated by the ruling of Patteson, J., in *Walker v. Woolcott* 8 C. & P. 352.

As to the last point, the learned judge's notes do not contain a statement of the language he used in directing the jury on the subject of damages, but we gather from the manner in which the plaintiff's counsel argued this part of the case, that he did not substantially differ from the defendants' counsel as to the character of the charge, and we assume the learned judge did tell the jury that they were at liberty to give what are sometimes called exemplary, sometimes even vindictive damages.

That the jury have this right in certain actions of trespass, and that the court will not interfere with them in the exercise of it, appears clear upon authority. I need only refer to the well known case of *Merest v. Harvey* 5 Taunt. 442. Nor is it confined to actions of trespass. *Bell v. Midland Railway Co.* 10 C. B. N. S. 287 was an action for injury to the plaintiff's reversionary interest, in which Willes, J., says, "If ever there was a case in which the jury were warranted in awarding damages of an exemplary character, this is that case. The defendants have committed a grievous wrong with a high hand, and in plain violation of an act of Parliament, and persisted in it for the purpose of destroying the plaintiff's business and securing gain to themselves," referring to *Emblem v. Myers* 6 H. & N. 54. And Byles, J., says, "Where a wrongful act is accompanied by words of contumely and abuse, the jury are warranted in taking that into consideration, and giving retributory damages."

In the case of *Emblem v. Myers* 6 H. & N. 54 referred to in the case last cited, the judge directed the jury that if they were of opinion that what was done was done wilfully, with a high hand, for the purpose of trampling on the plaintiff and driving him out of possession, they might find exemplary damages. On motion for a new trial, in which this charge was excepted to as a misdirection, the court sustained the verdict. The observations of the judges on this question are well worthy of attention, and there