she was accordingly allowed for the board and attendance of J. W., as well as for the board of his wife.

Macdonald, Q.C., and *Machar* for the plaintiff.

McIntyre for the defendant.

Div'l Ct.] [Dec. 21, 1889.

HAMILTON *v.* MASSIE.

Central prison—Rules creating indictable offence, authority to make—Section of Act imposing penalty, indictment under—Handcuffing, when justifiable.

Under the authority conferred by s. 6 of R.S.O., c. 217 (1877), on the inspector of prisons, to "make rules and regulations for the management, discipline and police of the central prison, and for fixing and prescribing the duties and conduct of the warden and every other officer or servant employed therein," the following rule was made, providing, amongst other things (Rule 201), "that any officer or employee who should knowingly bring, or attempt to bring, in to any prisoner any tobacco, should be at once dismissed and criminally prosecuted"; and (Rule 219) that employees of contractors must strictly conform to all rules and regulations laid down for the guidance of guards or employees of the prison, and any infractions of such rules and regulations by such employees will be promptly dealt with." By s. 27 of the Act, any person giving any tobacco to any convict (except under the rules of the institution), or conveying the same to any convict, shall forfeit and pay the sum of $40 to the Warden, to be by him recovered in any Court of competent jurisdiction.

The plaintiff, a workman in the central prison, in the employment of B., a contractor therein, was detected conveying tobacco to a convict, whereupon M., the Warden, directed McG., a constable, to arrest him, which he did, and though under no apprehension of plaintiff making any attempt to escape, handcuffed him, and led him through the public streets of Toronto to the police station. On the charge preferred the plaintiff was indicted.

Held, that the plaintiff was subject to an indictment, and therefore the arrest was legal.

Per GALT, C.J., and ROSE, J.—Under s. 6, authority was conferred to make the rules, and for disobedience thereof the plaintiff was subject to indictment, the remedy not being limited to that prescribed by s. 27.

But, per ROSE, J., in view of the opinion of MACMAHON, J., as to the effect of s. 27, that question was not of much importance, the result being the same whether indicted under the rule or statute.

Per MACMAHON, J.—The power conferred by s. 6, is limited to the objects therein expressed, and does not authorize the making of a rule to conflict with s. 27, or which would cause an offence to be created indictable at common law, but that the plaintiff was, by virtue of s. 25 of R.S.C., c. 173, subject to indictment under s. 27, the remedy thereunder not being limited to the recovery of the penalty.

Held, however, that under the circumstances the handcuffing was not justifiable, and the defendant, McG., was liable in trespass therefor; but no liability therefor attached to M., as the evidence failed to shew that he was any party to it.

McGillvray for the plaintiff.

Bigelow for the defendants.

Div'l Ct.] [Dec. 21, 1889.

WATT *v.* CLARK.

Malicious prosecution—Termination of Criminal proceedings—Evidence of—Right of defendant to prove plaintiff guilty of the criminal charge laid.

In an action for malicious prosecution, the claim was that defendant did, on the 8th of December, charge plaintiff with having on two or three occasions committed wilful perjury. The magistrate reserved his decision at the time, but on defendant preferring further charges of a similar character, the magistrate upon these and the former charges committed the plaintiff. When the matter came before the grand jury at the assizes, the prosecutor caused four charges to be laid against plaintiff, which included the charges laid on the 8th December, and which the grand jury ignored.

Held, that it sufficiently appeared that there was a termination of the prosecution in the plaintiff's favour.

The learned Judge ruled that the defendant could not produce evidence to contradict plaintiff on his statement as to the perjury, or to establish the fact of the perjury having been committed.

Held, that the ruling without qualification was too broad; for though a defendant in an