One of the defendants having used insulting expressions to the plaintiff during the examination, *Held*, no misdirection to tell the jury that they were at liberty to give exemplary or vindicative damages; and that the verdict was not excessive.

[Q. B., M. T., 1865.]

Action against the two defendants, justices of the peace. The declaration contained two counts, one for trespass and false imprisonment, the other in case for the same imprisonment, charging that it was done maliciously and without reasonable and probable cause. Plea, not guilty by statute.

The trial took place at Toronto, in October, 1865, before Adam Wilson, J.

It appeared that the plaintiff had obtained two search warrants, to search the premises of one Buckingdale for some yarn, which, as the plaintiff alleged, had been stolen from him. A constable executed both warrants. The plaintiff accompanied him in order to iddentify the yarn, if found, and did not otherwise interfere. The search was made on both occasions and nothing was found.

A day or two after the last search Buckingdale went before the defendant Mosely and charged the plaintiff, William Willis, and William Miller, upon oath, with committing a trespass on his (B.'s) house by entering into the house at an improper time, having been forbid so doing. Defendant Mosely issued a summons calling on these three persons to appear before him, or such other justices as might be at the place named, on the 3rd of February, 1865.

The plaintiff did not attend, but the other two parties did, and evidence in support of the charge was taken. The proceedings were adjourned, and on the 6th of February the plaintiff was present. The other two parties were discharged. Both defendants sat on the case. No witnesses were then examined, though they were present, but the evidence taken at the preceding meeting was read over to the plaintiff. The defendant Machell examined the plaintiff, putting a number of questions to him respecting the taking out the search warrant, and telling him that he (Machell) believed the plaintiff purloined the yarn and had got it, and calling him "scoundrel," "villain," and using threatening language towards him. The proceedings were further adjourned to the 8th of February, and then the plaintiff was convicted and fined $5, with $5 50c. costs, and upon this he was committed and sent to gaol on the 9th, and discharged upon a writ of habeas corpus on the 14th of February.

An appeal was also lodged with the Court of Quarter Sessions, and on the 15th March, 1865, the conviction was quashed with costs. Besides the abusive language used towards the plaintiff, it appeared that the defendant Machell, while sitting in this case, used disparaging language respecting other magistrates, and on their jurisdiction over the plaintiff in this matter being questioned, both the defendants concurred in refusing to consider that point.

The learned judge directed that, as the conviction had been quashed trespass would lie, if the defendants had no jurisdiction or had exceeded it: that the plaintiff complained that there was no jurisdiction, or at least excess, because the plaintiff entered the house of Buckingdale under the authority of the search warrant, and also because the defendants had isued a distress warrant in the first instance, contrary to sec. 59, Con. Stats. Canada ch. 103. The learned judge stated that in his opinion it was not made out that the issuing the warrant to commit in the first instance was wrongful, considering the proof of the plaintiff's poverty; and that the second count could only be sustained on the ground of malice and want of reasonable and probable cause. As to damages, he told the jury they might discriminate between the two defendants, and if they did the plaintiff might elect whether to take the greater amount against one and let the other go.

The jury found for the plaintiff, and assessed the damages as against Machell at $800, and against Mosely at $400, the plaintiff's counsel electing, after some hestitation, to take the verdict in this form.

Anderson obtained a rule calling on the plaintiff to shew cause why there should not be a new trial without costs, on the ground that the verdict was against law and evidence, as there was evidence on the first count that the defendants were acting within their jurisdiction; and on the ground of misdirection, in telling the jury that, though the defendants had jurisdiction to enquire into and adjudge as they did, if the evidence before them had been sufficient, yet the evidence before them ousted them of jurisdiction.

And in telling the jury they might assess several damages against two defendants in a joint action of trespass, and in telling them they ought to give damages *in pœnam*.

And for a miscarriage in the verdict, in finding separate damages; and for excessive damages.

Or why there should not be a new trial *de novo*, on the ground of such miscarriage.

McKenzie, Q. C., shewed cause, citing *Leary* v. *Patrick*, 15 Q. B. 266; *Rodney* v. *Strode*, 3 Mod. 101; *Sabin* v. *Long*, 1 Wils. 30; *Friel* v. *Ferguson*, 15 U. C. C. P. 584.

Anderson, contra, cited *Clark* v. *Newsam*, 1 Ex. 131; *Gregory* v. *Slowman*, 1 E. & B. 360; *Mitchell* v. *Millbank*, 6 T. R. 199; *Cave* v. *Mountain*, 1 M. & G. 262; *Haylock* v. *Sparke*, 1 E. & B. 471; S. C. 22, L. J. M. C. 72; *Ratt* v. *Parkinson*, 20 L. J. M. C. 212.

DRAPER, C. J., delivered the judgment of the court.

Under the Con. Stats. U. C. ch. 105, sec. 1, (amended by 25 Vic. ch. 22) one justice of the peace has authority to decide in a summary way when a person is charged before him with unlawfully entering into, coming upon, or passing through any land or premises whatsoever, being wholly enclosed, and the property of some other person.

An information was put in evidence laid by Josiah Buckingdale against the plaintiff and two other persons—one of them, as came out afterwards, a constable—not charging that they entered Buckingdale's house *unlawfully*, but that they had committed a trespass by entering the same at an improper time, having been forbid to do so.

The conviction was that the plaintiff did commit a trespass upon the premises of Buckingdale on the 30th January, 1865. Upon this conviction, which was afterwards quashed, the defendants issued a warrant to commit the plaintiff, and he was sent to gaol.