It appeared that this was an action for trespass and false imprisonment, in which the jury found a verdict for the plaintiff, and 1s. damages: that no certificate was obtained under the 324th section of the Common Law Procedure Act: that on the application of the defendant an order was made by a judge in chambers on the plaintiff, to bring in the *nisi prius* record to the clerk of this court, for the purpose of having costs taxed and judgment entered: that a notice of taxation of costs before the master was served by the defendant on the plaintiff's attorney, and also notifying the plaintiff to bring in his bill of Division Court costs, in order that the defendant might set off his costs: that the plaintiff's agent attended before the taxing officer, produced no bill, and objected to any taxation or entry of judgment by the defendant, as the plaintiff was not entitled to any costs, and that there were no costs against which the defendant could set off his costs: that the master proceeded to tax, and did tax the defendant $75 89, for which amount judgment was entered and execution issued against the plaintiff.

Upon this the plaintiff obtained a summons, on the 28th of March last, to review the taxation, &c., and on the 12th of April the learned Chief Justice, after hearing the parties, made an order that the master should review his taxation, and directed him to disallow to the defendant so much of the defendant's costs taxed between attorney and client as exceeded the taxable costs of defence, which would have been incurred in the inferior court, and not to set off the same against the plaintiff's verdict; and he further ordered that the execution against the goods and chattels of the plaintiff be set aside. To rescind this order this motion was made.

Robert A. Harrison shewed cause, citing *Cameron* v. *Campbell*, 1 U. C. P. R. 170; S. C. 12 U. C. Q. B. 159; *Cross* v. *Waterhouse*, 10 U. C. L. J. 215.

The sections of the statute referred to are cited in the judgment.

MORRISON, J., delivered the judgment of the court.

We are of opinion that the order of the learned Chief Justice was properly made, and that this rule moved should be discharged.

This is a case within the provisions of the 324th section of our Common Law Procedure Act, Consol. Stat. U. C, ch. 22, which enacts that "if the plaintiff in any action of trespass, or trespass on the case, recovers by the verdict of a jury less damages than eight dollars, such plaintiff shall not be entitled to recover in respect of such verdict *any costs whatever*," unless the judge who tried the cause certifies as in the section mentioned. The verdict here is for 1s., and no certificate granted; but it is contended for the defendant that the case is one within the 328th section of the act, and that he is entitled to have the benefit of that section, which enables a defendant to set off against the amount of the plaintiff's verdict and inferior court costs taxed to him, a certain portion of his, the defendant's, superior court costs, and to have execution against the plaintiff for the excess, if any.

The 324th section was passed and no doubt was intended to discourage vexatious and petty litigation, and the 328th section provides for cases not already provided for by the 324th section, and which are of the proper competence of the County Court and Division Courts; cases which plaintiffs were not prohibited from prosecuting in the superior courts; but the legislature, with a view of restraining plaintiffs from incurring needless expense, by the 328th section enacted that if the plaintiff brings this suit in the superior court, and recovers a verdict for an amount within the jurisdiction of either of the inferior courts, and does not obtain from the presiding judge the certificate required by that section, in that case "the defendant shall be liable to County Court costs or to Division Court costs only, as the case may be;" and the section further provides, that if the judge does not certify, "so much of the defendant's costs taxed, as between client and attorney, as exceeds the taxable costs of defence which would have been incurred in the County Court or Division Court shall, in entering judgment, be set off and allowed by the taxing officer against the *plaintiff's County Court or Division Court costs to be taxed*, and if the amount of costs so set off exceeds the amount of the plaintiff's verdict *and taxable costs*, the defendant shall be entitled to execution for the excess."

There is no authority for the taxing officer allowing costs to the plaintiff here, nor is the defendant liable to any. Consequently there are no costs within the meaning and intention of the 328th section, against which the defendant's excess of costs are to be set off, and against which the defendant may desire to protect himself.

In our opinion the two sections of the act are distinct, and applicable to cases clearly distinguishable. In the one set of cases the defendant is not liable to any costs whatever; in the other he is liable to certain costs, but entitled under certain circumstances to set off against the plaintiff's costs and verdict a certain amount of his costs.

The rule must be discharged, and (as it was moved with costs) with costs.

Rule discharged.

REGINA v. SHAW.

Conviction for assault—Form of—Statement of place and of request to proceed summarily.

On motion to quash a conviction by two justices of the county of Norfolk for an assault,

Held, 1. That stating the offence to have been committed at defendant's place in the township of Townsend was sufficient, for Consol Stat. U. C ch. 3, sec. 1, sub-sec. 37, shews that township to be within the county.

2 That it was unnecessary to shew on the face of the conviction that complainant prayed the magistrates to proceed summarily, for the form allowed by Con. Stat C, ch 103, sec. 50, was followed, and if there was no such request, and therefore no jurisdiction, it should have been shewn by affidavit

3. That it was clearly no objection that the assault was not alleged to be unlawful.

(Q. B., T. T., 28 Vic.)

J. B. Read obtained a rule calling on the chairman *pro tem* of the Quarter Sessions for the county of Norfolk, &c, &c., and upon George W. Park and Thomas W. Clark, Esquires, two of the justices of the peace for the said county, to shew cause why a conviction made by the said George W. Park and Thomas W. Clark, dated the 23rd of May, 1864, upon complaint of Thomas Henry for assaulting him, whereof John Shaw was convicted, and the order of the Court of Quarter Sessions confirming the same, and all proceedings had thereunder, should not be quashed, on the following grounds:

1. That the conviction does not shew jurisdiction on its face, as the assault complained of is not alleged to have been committed in the county wherein the magistrates had jurisdiction, or that they had authority to adjudicate thereon.

2. That the conviction does not shew under what authority the justices proceeded to exercise summary jurisdiction, or that the complainant prayed the justice to proceed summarily, under sec. 37 of ch. 91, Consol. Stat C.

3. That it does not appear that Shaw was charged or convicted of any "legal offence" under the statute giving to justices summary jurisdiction, inasmuch as it does not appear that Shaw illegally assaulted complainant.

4. That complainant did not in fact pray for summary procedure on the part of the convicting justices.

This rule was granted on reading the writ of *certiorari*, the return thereto, and the papers and affidavits filed.

The conviction began thus:—"Be it remembered, that on, &c, at W., in the county of Norfolk, John Shaw is convicted before the undersigned, two of her Majesty's justices of the peace in and for the said county, for that he, the said John Shaw, did on Saturday, the 21st day of May, instant, at his place in the township of Townsend, being in a certain field of wheat on his place, violently assault and beat Thomas Henry, of the village of W. And we adjudge," &c.

Atkinson shewed cause. He referred to *Regina* v. *Fuller*, 2 D & L 98; 8 Jur. 604, S. C; *Ex parte Allison*, 24 L. J. N S. M. C. 3; 10 Ex. 561, S C; *Carpenter* v. *Mason*, 12 A. & E 629; Paley on Convictions, 147; Consol. Stats. C., ch. 91, sec. 37, ch. 103. sec. 50.

J. B Read, contra, cited *In re Helps and Eno*, 9 U. C. L. J. 302, *In re Switzer and McKee*, Ib 266; *In re Hespeler and Shaw*, 15 U C Q B 194; *Rex* v. *Inhabitants of Whitmash*, 7 B & C. 596; *Westbrook* v. *Callaghan*, 12 U. C. C. P. 616.

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

Except the affidavit of service of the rule there is no other