plaintiff three hours to pay the money, and the constable was to keep him in charge.

It was proved that Garafraxa is one of the largest townships from east to west of any in Canada, being about twenty miles long and contains several villages.

It further appeared that on the 22nd of June the defendant was served with notice that the plaintiff appealed against this conviction, and an order under the seal of the Court of Quarter Sessions, and signed by the clerk of the peace, was produced. It was as follows:

"In the Court of General Quarter Sessions of the Peace for the County of Wellington. On the twelfth day of September, in the year A.D., 1865.

"James Gibbie Allan against James Neill. On the case being called, and notice of appeal proved and heard, it was ordered by the court that the conviction of James Neill be quashed, with costs.

"[Seal] (Signed) Thomas Saunders,
"*Clerk of the Peace.*

"Office of the Clerk of the Peace, Guelph, March 19, 1866.

The clerk of the peace also produced the minute book of entry of proceedings at the Court of Quarter Sessions on the 12th of September, 1865. The following is a copy:

"In the Court of Quarter Sessions for the county of Wellington, At a general Court of Quarter Sessions of the Peace for the county of Wellington, held at Guelph on Tuesday the 12th day of September, in the year of our Lord one thousand eight hundred and sixty-five, pursuant to statute.

"Present, Archibald McDonald, Esq. County Court Judge, chairman, James Hough, David Allan, John Beattie, James Leughrem, Esquires, justices of the peace for the county of Wellington

"The following appeal was entered: James Gibbie Allan against James Neill, Master and Servants Act. James Neill appellant.

"The service of notice of appeal was admitted. The order of court was, that the conviction of James Neill be quashed with costs.

"Thomas Saunders, *Clerk of the Peace.*"

Mr. Saunders stated there was no jury empanelled There was no trial on the merits.

The defendants counsel took several objections, which were afterwards renewed in this court

For the defence, Allan, the employer of the plaintiff, was called, and gave evidence, to sustain the conviction as actually made by the defendant, showing that Neill was under an agreement to serve him, and left against the will of Allan. He further said, that what made him force plaintiff was that plaintiff said Allan owed him $23, and Allan said he did not owe him; and that's what made Allan take plaintiff up Allan swore he believed it was defendants doing the warrant was issued in the first instance.

The learned judge told the jury that if they were satisfied that the defendant issued the warrant of commitment in good faith, intending to act as a magistrate, they should find in his favor on the first and second counts. If not satisfied that he was acting in good faith, to find for the plaintiff on the first count and for defendant on the second, and in that view the learned judge inclined to think they might also find for the plaintiff on the third count. As to this count, he told the jury that if the defendant issued the warrant of commitment after the other magistrates in his presence had declared that they had dismissed the complaint with costs, then he issued it without reasonable or probable cause, and they should find for the plaintiff if they thought the defendant acted maliciously. If on the third count they thought the plaintiff entitled to a verdict, they should say whether Neill committed the offence charged against him, and if so they might, according to the statute, limit the verdict to three cents.

The defendants counsel excepted to the charge

The jury found for the plaintiff, damages $100, and said they did not think the defendant honestly believed he was acting as a magistrate at the time. The plaintiff elected to take the verdict on the first count, and the verdict was so entered for him, and for the defendant on the second and third counts.

In Easter Term *M. C. Cameron*, Q. C., obtained a rule *nisi* for a nonsuit, or for a new trial, the verdict being contrary to law and evidence, and for misdirection, and the reception of improper evidence; the misdirection being in leaving it to the jury to say whether the defendant believed whether he was acting as a justice of the peace, when the evidence shewed, and the learned judge should have ruled, that he was so acting, and the plaintiff having failed to prove malice a nonsuit or verdict for the defendant should have been directed; and in ruling that the notice of action was sufficient, and that there was legal evidence of the quashing of the conviction under which the plaintiff was imprisoned; and in telling the jury that the plaintiff having been acquitted by three magistrates, the defendant had no right to convict the plaintiff, although no record of such acquittal was made; and in not telling the jury that no legal evidence of the acquittal against the record of conviction was given, and that the conviction was legal; and the reception of improper evidence being in admitting evidence of the minute book of the Quarter Sessions to shew the quashing of the conviction, without any formal record of the judgment or decision having been made up, and no legal or formal record of such proceedings being produced.

In this term *Robert A. Harrison* shewed cause, citing *Wedge* v. *Berkeley*, 6 A. & E. 663; *Osborn* v *Gough*, 3 B. & P. 551; *James* v. *Saunders*, 10 Bing 429; *McCance* v. *Bateman*, 12 C. P. 469 *Moran* v. *Palmer*, 13 C. P. 528; *Helliwell* v. *Taylor*, 16 U. C. Q. B. 279; *Connors* v. *Darling*, 23 U. C. Q. B. 541; *Rex* v. *Hains*, Comb, 337; Tay. Ev. 2nd ed., secs. 1390, 1391, 1408, Tidd. Prac. 28.

M. C Cameron, Q. C., shewed cause, citing *Rex* v. *Ward*, 6 C. & P. 366; *Rex* v. *Smith*, 8 B. & C. 341; *Rex* v. *Bellamy*, Ry. & Moo. 172; *Prestidge* v. *Woodman*, 1 B. & C. 12; *Hazeldine* v. *Grove*, 3 Q. B. 997; *Kirby* v. *Simpson*, 10 Ex. 358; *Weller* v. *Toke*, 9 East, 364.

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

The first question that arises regards the notice, whether under the facts appearing the defendant was entitled to it, and if so was the notice served defective.

When the act of a justice of the peace is either clearly in excess of jurisdiction or an act not within his jurisdiction, he will nevertheless be