

## Province of Nova Scotia.

## SUPREME COURT.

Full Court.]

MCKENZIE v. JACKSON.

[March 8.

*Assessment for school purposes—Municipal Assessment Act of 1895—Incorporation of provisions in Public Instruction Act—Amendments made subsequently—Mistrial—Secretary of school trustees not responsible for arrest of party indebted for poll tax.*

Defendant C., as secretary of the school trustees made an affidavit under the Acts of 1895, c. 5, s. 54, before the defendant J., a justice of the peace, setting forth that plaintiff was indebted to the trustees in a sum of money, being the balance of a poll tax imposed for school purposes, and that a demand had been made for payment, but the money had not been paid. Upon this affidavit J. issued a general warrant, under the Assessment Act of 1895, s. 55, which was delivered to the defendant H., a constable, to execute. H. returned that he was unable to find any goods of the plaintiff, and that the amount and costs were still due. The magistrate thereupon issued a warrant, under which plaintiff was arrested, and for this arrest the action was brought. The Act in relation to public instruction, Acts of 1895, c. 1, s. 44, provided that in default of payment the amount assessed for school purposes should be collected under the "provisions of the Municipal Assessment Act of 1895." The Municipal Assessment Act (Acts of 1869, c. 5) contained no provision for imprisonment in default of payment, but by the Act to amend and consolidate the acts relating to Municipal Assessment (Acts of 1896, c. 14) such a provision was added.

*Held*, that the incorporation in the Public Instruction Act of 1895 of the provisions of the Municipal Assessment Act of 1895 had not the effect of incorporating also the amendments made to the latter act in the following year, there being nothing in the words used to justify the construction that the rates were to be collected under the Municipal Assessment Act as amended from time to time.

Through some inadvertence, to which the conduct of the plaintiff's solicitor contributed, the action, which was one for false imprisonment, was tried as if it were an action for malicious prosecution, and on answers of the jury to questions submitted to them judgment was entered for defendants.

*Held*, that there had been a mistrial, and that, except to the defendant C., the judgment entered for defendants must be set aside with costs, and a new trial ordered.

As to the defendant C., dismissing the action with costs.

*Held*, also that defendant C. was not liable in any way for the acts complained of, the presumption being that he was only seeking to have the law carried out, and all that he did being consistent with that view.

*H. Mellish* for appellant. *W. B. A. Ritchie, Q.C.*, and *J. A. Mackinnon* for respondent.