3rd. That the evidence did not justify a verdict against either of the defendants. This is the ninth objection of the rule.

Then as to the first of these three objections, that a general verdict is bad in law, when a count in trespass and in case are joined in the same declaration, no authority was cited in support of it; and we find the contrary to be the law and practice. Some of the cases cited in the argument were like the present, one count in trespass and the other in case, and general damages assessed.

In *Preston* v. *Peeke*, (1 E. B. & E. 336), a record was received in evidence in which the first count was in trespass, the second for the wrongful sale of a distress, and the third for distraining when no rent was in arrear, and general damages had been assessed; and it was held that the parties could shew, as a matter of fact, how much of the damages had been assessed on one count and how much on the others; but no kind of exception was taken to the legal effect of the general finding on all the counts.

As to the second objection, we are clearly of opinion against it: we think the evidence did justify a verdict against both the defendants.

The chief objection, next to that which was taken to the notice, was the 3rd,—that the evidence did not establish any tort against the defendants for which they could, either in law or in fact, be jointly liable.

The evidence did establish that Collinson procured the warrant to be isseud by his co-defendant Ferguson, and that they both knew there was no complaint or charge made by Russel to justify the making of the warrant. The warrant was given by Ferguson to Collinson that the plaintiff might be arrested upon it, and the plaintiff was accordingly arrested, and arrested, as it has turned out, illegally and without any colour of right; yet this arrest would not have been made but for Ferguson's act. It is of no matter that this arrest took place in the county of Leeds, and under the authority of another magistrate, by his backing the warrant; for the arrest is, nevertheless, wrongful, not from the backing, but from the prior illegal proceedings of the defendants. The backing was not strictly the authority to arrest: it was a proceeding which authorized the original warrant to be executed in the county of Leeds; and for such an arrest the defendant Ferguson is as much responsible, as if it had been made in his own county. It was made by him for the express purpose, as the warrant shews, and the evidence too, of its being executed, not in his own county, but in the county of Leeds, to authorize which he knew that the backing by a magistrate of that county would be necessary to be made.

Now, if the person who makes an illegal warrant, and delivers it to another to be executed, can in law be joined in an action for the wrongful arrest which was made under it, with the person who made the arrest, or who specially procured it to be made, this objection must fail; for it specifically denies that this is the law; but it is too well established that all are principals in trespass: procuring, commanding, aiding, or assisting makes one a trespasser: *Barker* v. *Braham*, (8 Wils. 377).

It is upon this principle that the attorney and client, and landlord and bailiff, and magistrate and prosecutor, have been so frequently, and can be properly joined together, respectively, in the one action.

We are of the opinion that both of the defendants were, upon the evidence, rightly charged with the one and the same wrongful act, the illegal arrest of the plaintiff under the warrant by which they are both connected with the arrest.

If it had appeared by the evidence that Ferguson was liable to a particular measure of damages on some special ground personal to himself, and that Collinson was liable, upon some other ground, to a different measure of damages, it may be that the same general damages should not have been awarded against the two; and, perhaps, the jury should have assessed the damages severally, according to the degree of wrong or malice which was chargeable against each, leaving it to the plaintiff afterwards to deal with such a finding as he might be advised: *Clark* v. *Newsam*, (1 Exch. 131); *Gregory* v. *Cotterell*, (17 Jur. 525, 1 E. & B. 360). The damages rendered we think to be quite applicable to both the defendants, and that there is no ground for complaint in this respect.

It appears what Collinson's purpose on this arrest of the plaintiff was: it does not clearly appear that Ferguson had the same purpose; and there is no conclusive evidence of concert between them. Perhaps, it might have been inferred; for there was some ground to suspect it; but we think that, as there was only one cause of action, and that that was the trespass, the plaintiff ought to be restricted to a verdict upon the first count only.

It is not necessary to say whether, in an action such as this, one of the defendants could have been convicted on the count in trespass, and the other on the count in case. These causes of action may be joined: the writ supposes the defendants to be jointly liable for all; yet there are not wanting authorities that, in actions of tort, one defendant may be found guilty of committing an act at one time, and the other of an act at another time; or, one may be found guilty of one conversion, and another of a different conversion; or, one guilty of a part, and the rest of all.

The defendants' rule, we think, ought to be discharged.

Rule discharged.

ELECTION CASE.

(*Reported by* R. A. HARRISON, Esq., *Barrister-at-Law.*)

THE QUEEN EX REL. MCMANUS V. FERGUSON.

Election of warden—Proper description of warden—Sufficiency of certificates of reeves and deputy reeves—Duty of clerks—Nature and effect of certificates—New election—Costs.

Held 1. That the proper designation of a warden in a *quo warranto* summons, is "warden of the corporation of the county of ——."

Held 2. That "warden of the county of ——" is not improper, as there is no particular name or designation in the Municipal Institutions Act.

Held 3. That "warden of the County Council of the County of Simcoe" might, if deemed necessary, be amended by striking out the words "of the County Council" after the word "warden," and before the words "of the County of Simcoe" in the writs to be issued in pursuance of the judgment in a *quo warranto* matter.