

Weatherbe, J.]

IN RE SARAH SMITH.

[May 1.

Bail—Motion to estreat refused—Code, secs. 958, 959.

The condition of a recognizance to keep the peace taken by the Stipendiary Magistrate of the City of Halifax was that the above named S. S. should keep the peace and be of good behaviour, etc., for two years from the date first above written.

On motion on notice by the Attorney-General to estreat the recognizance for breach of the condition thereof.

Held, that to sustain the recognizance under s. 958 of the Criminal Code, no form being prescribed (following *Bridge v. Ford*, 4 Mass. 642), it should have shewn on its face by recital or otherwise that the magistrate proceeded under that section.

Held, that as the magistrate followed form XXX. of the code, it must be assumed that he was proceeding not under s. 958 but under s. 959, which alone authorized the form used, and that as the security required was for a period of two years, the order was in excess of the powers conferred upon the magistrate by s. 959 of the Code, and the recognizance founded upon such order was null and void, and the motion to estreat the recognizance must be refused.

J. J. Power, for the bail and sureties. *Cluney*, for Attorney-General.

Province of New Brunswick.

SUPREME COURT.

En Banc.]

WHITE v. HAMM.

[April 24.

False imprisonment—Policeman arresting without warrant—Notice of action—Belief in plaintiff's guilt.

In an action for false imprisonment for arresting plaintiff without warrant on a charge of theft, the jury found that defendant was acting as a policeman in making the arrest, but that the circumstances afforded no justification for an arrest without warrant. On motion for a non-suit on the ground that defendant was entitled to notice of action,

Held, that for the purpose of determining this question it should have been left to the jury to find whether or not defendant honestly believed that plaintiff was committing a theft. If he did he was entitled to notice and the reasonableness of such belief was of no importance.

New trial ordered.

Wallace, K.C., and *G. H. V. Belyea*, for plaintiff. *Skinner*, K.C., for defendant.