tiff to Mosley, was produced, which the defendant afterwards, according to one account, took home with him, but according to another account he was talking to plaintiff after the trial, advising her to settle, when he said he would read the lease to her, and while he was getting his spectacles she snatched it up and took it away. Mosley swore that he produced the lease, and that it was his property.

A warrant, dated 5th May, was issued by defendant, stating that "information having been laid before the undersigned, &c., that L. A. Appleton did steal a lease between her and William Mosley, which was entrusted to my care, and now made before ———, substantiating the matter of such information, these are therefore to command you, &c., to apprehend the said L. A. Appleton and bring her before me, &c., &c., to answer to the said information." This warrant was under defendant's hand and seal.

A constable swore that defendant gave him the warrant; that plaintiff was coming down the street and defendant pointed her out to him, and told him to arrest her; that he did so, and afterwards brought her before defendant, who required her to give up the lease, which she refused to do, insisting it was her property. He said it was Mosley's, and he would commit her to jail if she did not. The constable then removed her by defendant's orders, and she was in his constructive custody some days, the constable requiring her to appear before him two or three times a-day. On the 10th May defendant told him to bring her up, and she appeared before him Defendant told her she was charged with stealing the lease, when she said it was her property. He said he would commit her unless she found bail. She refused, and next day he committed her to jail for trial. She was taken to Toronto and there bailed.

It was proved that defendant admitted there was no information laid, and that he himself was the prosecutor.

It was shown that he did not wish to send her to jail, and tried himself and asked her friends to persuade her to give up the lease, and a brother magistrate said he admitted he did not think she had any felonious intention in taking it, that she took it as her own property, and that she was a girl of good character.

It would seem that defendant took the lease away to his own house after leaving the summons, and plaintiff was there and snatched it up and ran or went away with it, saying to defendant, as she went, "You shall never see this again." Defendant said to the persons present, "She has stolen the lease."

The indictment at the sessions was put in. Defendant's name was the first witness on it. A man named Devlin, who saw her take it in the store, and the constable, were the other names indorsed. A true bill was found.

At the trial defendant was examined, and swore there was no information; that he was prosecutor, and he did not believe she had stolen the lease, but took it as her own property. Plaintiff was acquitted.

For defendant it was objected, that on first and second counts trespass did not lie, as there was a warrant good on its face; that malice was disproved, and no want of probable cause shewn.

Leave was reserved to move as to first and second counts.

The learned judge held there was evidence of want of probable cause, and the jury were so told; that defendant was wrong in endeavouring to compel plaintiff to give up the lease, but that at the same time plaintiff's misconduct should weigh with them in considering damages. For defendant it was objected. that the learned judge should not have said that defendant ought to have applied to another justice of the peace, and not have acted in his own case, and should not have told them to find on each count, as plaintiff could not recover in case and trespass for the same act; if defendant had jurisdiction it could only be in case; if not, it could only be trespass, &c., &c.

The jury found for plaintiff on first count $100, on second count $100, on third count $800, and on fourth and fifth counts for defendants,

In Michaelmas Term *McMichael* obtained a rule on the law and evidence, and for misdirection in ruling there was a want of probable cause, and that plaintiff might recover distinct damages on first, second, and third counts; and in holding that there was evidence on first and second counts, when a warrant was shewn valid on its face, the issue of which was the subject of trespass; and in ruling there were three distinct causes for action; and for admission of improper evidence as to plaintiff's character; and for excessive damages; and because the verdict was inconsistent in treating the same act as both a direct and consequent wrong; that the acts complained of in third count could only sustain a count in trespass and not a count in case. and if count limited to what happened at sessions, then the acts of trespass given in evidence and damages as for those acts under said count, and damages were thereby excessive and erroneous, &c., &c.

McKenzie, Q C., shewed cause, and cited *Broad* v. *Ham*, 5 Bing. N. C. 722; *Arch.* Pr. 11th ed. 462; Con. Stat. Ca. ch. 92, sec. 24; *Berry* v. *Da-Costa*, L. R. 1 C. P. 331; *Smith* v. *Woodfine*, 1 C. B. N. S. 660.

McMichael, contra.

HAGARTY, C. J.—I have no doubt of the illegality of defendant's conduct. It is quite true that a warrant, valid on its face, was produced; but that warrant fails to protect the defendant, because it had no valid foundation. There was no information whatever laid before him; no complaint lodged either by Mosley or any other person; he had, therefore, no jurisdiction over plaintiff.

Assuming that even a crime had been committed, over which crime he, as a magistrate, might have jurisdiction; still, as was said in *Caudle* v. *Seymour*, 1 Q B. 892, his protection depends, not on jurisdiction over the subject matter, but jurisdiction over the individual arrested; and Coleridge, J., adds, "To give him jurisdiction over any particular case. it must be shewn that there was a proper charge upon oath in that case."

The defendant chose to act solely on his own view of the law. Because he sees the plaintiff snatch up a lease, in which she was the lessor, and say it was her property, he thinks fit to call it stealing, without any complaint or evidence