(s. 9); or, as it is put in *Roberts* v. *Orchard*, (2 H. & C. 769, in the Exch. Ch.) following the direction in *Hermann* v. *Teneschall*, (13 C. B. N. S. 392,) whether Ferguson honestly believed in the existence of those facts which, if they had existed, would have afforded a justification under the statute, and honestly intended to put the law in force.

This was the proper direction to be given to the jury: *Booth* v. *Clive*, (10 C. B. 827); *Coz* v. *Reid*, (13 Q. B. 558); *Read* v. *Coker*, (13 C. B. 850); *Heath* v. *Brewer*, (15 C. B. N. S. 803). Whether the defendant had reasonable ground for that belief, that is, whether he judged reasonably or not, is a subordinate question, an ingredient in enabling the court to arrive at a conclusion as to his *bona fides;* for when the question is whether a man has or has not acted *bonâ fide*, the reasonableness of the ground of belief may be fit to be considered; and a party is entitled to notice of action, provided he has acted *bonâ fide* in the belief that he is pursuing the statute, even although there may be no reasonable foundation for such belief: per Maule, J., (13 C. B. 863.)

In the case last mentioned, where an omnibus proprietor wrote upon the driver's license, that he had discharged the plaintiff from his employ for damaging his cab and not bringing home money, but the Statute, (6 & 7 Vic. ch. 86, secs. 21-24) did not confer this power upon the proprietor, but only on a magistrate, upon the driver being properly brought before him, and an action was brought by the driver against the proprietor for defacing the license and writing defamatory matter upon it, the court held that the proprietor was not entitled to notice of action under that statute. Erle, C. J., said: "Can it be said that the defendant could honestly believe that he was acting under the authority of this section? The defendant could not honestly believe he was a magistrate, or that he could be justified in acting as a judge in his own case. There was no pretence for saying that he was acting, or could for a moment suppose he was acting, under the authority of the statute."

Now, by considering the necessity there was that there should have been an information in writing and under oath laid before the magistrate to confer upon him jurisdiction to issue his warrant for the arrest of the plaintiff, and by considering the nature of the direction which the judge ought to give to the jury in such a case, we shall be able to determine whether the defendant Ferguson was entitled to notice of action or not.

Can it be said, as Erle, C. J, expressed himself in the last case, that Ferguson could himself believe he was acting under the authority of the statute in the execution of his office or duty, by issuing the warrant to arrest the plaintiff, without any charge or complaint of any kind, verbal or otherwise, having been first made against the plaintiff? And I think we may also add, as was said in the same case, there was no pretence for saying that he was acting, or could for a moment suppose he was acting, under the authority of the statute. He acted in a manner which the statute under no circumstances could justify; this was to "exceed his jurisdiction:" *Ratt* v *Parkinson* (20 L. J. Mag. Ca. 208.)

The facts of the case shew not one single circumstances to remove the suspicion that the defendant was not a stranger to the purpose which Collinson manifestly had in instigating and promoting this criminal proceeding against the plaintiff. There was no evidence of *bona fides*, nor room to conjecture it. There was nothing, in fact, to leave to the jury respecting it; but if there had been, no objection was taken to the mode in which the learned judge left the case to the jury.

As we find that Ferguson was not entitled to notice of action on the ground just stated, it is unnecessary to consider the other reason advanced by the plaintiff why notice of action was not necessary; namely, that the warrant was made out of the local jurisdiction of the magistrate. The cases of *Partridge* v. *Woodman*, (1 B. & C. 12); *Arnold* v. *Dimsdale*, (2 E. & B. 580); and *Hughes* v. *Buckland*, (15 M. & W. 346,) are applicable to this part of the case; and from these cases it would seem, that, although Ferguson did make the warrant without the limits of the county for which he was a magistrate, he would not, therefore, necessarily forfeit his right to notice of action. And it is, also, unneccssary to consider the sufficiency of the notice: the first part of it relating to the trespass seems to be unquestionably bad, for not stating time and place.

As to that branch of the rule which relates to the application for a new trial, we should first dispose of such facts of it which we cannot entertain. They are contained in the 2nd, 4th, 6th, and 7th objections above stated, and we decline to entertain them, because we see or know of nothing to shew us that the learned judge, as to the 4th objection, refused to receive any evidence which was admissible; for it could not be permitted to the defendant to prove the plaintiff guilty of any charge that had never been made made against him, or of which he had never been convicted, even if such evidence be admitted to have been tendered to him; or, as to the 6th and 7th objections, that he misdirected the jury in the manner represented, and because, as to all the objections, we do not find in the notes of the learned judge that the defendants, or either of them, took any exception to the course which was pursued at the trial, or desired any other course to be taken. The defendants must, therefore, be precluded from now objecting to that which they did not object to at the proper time and before the proper authority.

We may also dispose at once of the 10th objection in the rule, as to the venue, because it is now of no moment, as, according to our opinion, Ferguson was not entitled to notice of action, and is not within the protection of the act.

The other questions raised by the remaining part of the rule are:

1st. That in a declaration containing a count in trespass, and another in case, the verdict, if it be general on both counts, is contrary to law. This is the first objection of the rule.

2nd. That the evidence did not establish any joint tort against the defendants, in which they could in law be, or were, in fact, jointly liable. This, we think, is the effect of the third, fifth and eighth objections of the rule.