

could act was faulty in a material respect—he could not come to the conclusion that reasonable ground existed for believing, etc.; consequently his issue of the search-warrant was contrary to law and therefore void.

At common law the jurisdiction of a Justice is the same as under the Code: 2 Hale's Pleas of the Crown, p. 113; Burn's Justice of the Peace, 13th ed., vol. 5, p. 1179. The statement in Halsbury's Laws of England, vol. 9, p. 310, para. 625, is too broad.

Regina v. Walker (1887), 13 O.R. 83, and Rex v. Kehr (1906), 11 O.L.R. 517, do not indicate, as was suggested, that the search-warrant was merely irregular and therefore voidable and not void.

The warrant not being a lawful one, the defendant is not protected by sec. 25 of the Criminal Code.

The conclusion of the learned Justice of Appeal upon the whole case was, that the defendant, by failing to set out the causes of his suspicion, rendered the magistrate incompetent, for want of jurisdiction to issue the warrant either under the Criminal Code or at common law; that the defendant was liable for the consequences that followed from his act; that, the warrant being void, the trespass and search made under it were unlawful; that the defendant, having taken part in them, was liable in damages, and was not protected by sec. 25 of the Code; that, in view of the trial Judge's ruling that the claim for malicious procedure failed, the only damages to which the defendant had been shewn to be liable were those consequent upon the trespass and search; that the charge of the trial Judge included all the elements which could properly be taken into consideration by the jury in that respect; and that the judgment below was right.

Both appeal and cross-appeal should be dismissed with costs.

MULOCK, C.J. Ex., and MASTEN, J., agreed with HODGINS, J.A.

RIDDELL, J., read a dissenting judgment. He said that the verdict proceeded on a wrong basis, and the judgment should, if the defendant desired it, be set aside. The warrant was not void, but merely irregular. An action in trespass lay not only against the magistrate but also against the defendant. The damages would be allowed for all the consequences of the issue of the warrant; and the defendant might be well-advised to pay the amount awarded against him rather than have a new assessment on a different principle. If the defendant should be so advised, the appeal should be dismissed with costs. If not, the appeal should be allowed and a new trial ordered; costs here and below to be costs in the cause.

*Appeal dismissed (RIDDELL, J., dissenting).*