

as to the alleged trespass upon the plaintiff's property and the search thereon, and the jury assessed the damages at \$200, for which amount with costs the trial Judge directed that judgment should be entered.

The defendant appealed from that part of the judgment, and the plaintiff from the dismissal of his other claims.

The appeals were heard by MULOCK, C.J. Ex., HODGINS, J.A., RIDDELL and MASTEN, JJ.

Daniel O'Connell, for the defendant.

A. C. Heighington, for the plaintiff.

HODGINS, J.A., in a written judgment, said that the plaintiff's appeal had been dismissed at the hearing.

Considering the defendant's appeal, he said that it was contended that, even if the search-warrant was void or defective, the only action in which the defendant could be made liable was one on the case, in which malice must be shewn, and that trespass did not lie, as a warrant, legal on its face, protected the defendant.

Assuming the learned trial Judge to have been right in withdrawing the claim for malicious procedure from the jury (and this Court had dismissed the plaintiff's appeal from that ruling), the damages which had been found included every element which could properly have been taken into consideration by the jury, either in trespass or case, if trespass could be laid notwithstanding that ruling. The distinction between trespass and case did not seem to be material, as mala fides in the execution of the warrant was left to the jury as proper for their consideration. See *Cooper v. Booth* (1785), 3 Esp. 135.

Damages had been given by the jury for all the consequences of the issue of the search-warrant, apart from those which might have been recovered in an action for malicious procedure, if that had been successful. The whole of the issues raised and the consequences flowing therefrom were properly presented to the jury.

The defendant in the sworn information which led to the issue of the search-warrant failed to comply with the provisions of sec. 629 of the Criminal Code, which confers jurisdiction upon a Justice of the Peace to issue a search-warrant, provided he is satisfied by information upon oath, in form 1, that there is reasonable ground for believing that there is in any building . . . anything upon or in respect of which any offence against this Act has been or is suspected to have been committed," etc. Form 1 requires the statement on oath of "the causes of suspicion, whatever they may be," and this statement was omitted from the information. The basis, therefore, upon which alone the Justice