distress. All these things he had to do in the execution of his duty, and he had jurisdiction to do them; but there was a defect in the conviction, as the justice ordered an alternative beyond his jurisdiction. If anything had been done in respect of the wrongful order, it would have been an act beyond his jurisdiction, but there was nothing of the sort. * * I think the case is precisely that which sec. 1 is intended to protect. Then I think the construction of sec. 2 must be so controlled by sec. 1, as to be consistent with it, and this is done by so construing sec. 2 as to confine its application *to cases in which the cause of action arises from the excess of jurisdiction*, as it would have done in this case if the plaintiff had been put in the stocks."

Leary v. *Patrick et. al.* (15 Q B. 226), is worthy of notice. On an information laid, and summons served, the plaintiff was convicted in his absence. While justices were sitting the plaintiff was brought in, and was told he was convicted. He asked might he go to his van, and was told by one of the defendants that if he went he must go in custody. There appeared to be no more formal commitment than this. He was kept in prison till next day, and in the meantime his goods were seized under defendant's distress warrant, reciting conviction for penalty, and 12s. costs. A conviction was subsequently drawn up, but was silent as to costs. The conviction was quashed by the sessions, and trespass was brought for the imprisonment and seizure of goods. The action was held maintainable for both. Lord Campbell says that the Protection Act "leaves the remedy of the party injured the same as it would have been before that act, in cases in which the justices have acted without jurisdiction, or have exceeded their jurisdiction provided the conviction has been quashed before action. * * I am of opinion that in doing the acts complained of, the justices have exceeded their jurisdiction; for whether they had jurisdictions to adjudge that the plaintiff should pay costs or not, they did not in fact adjudge that he should pay them."

In *Cleland* v. *Robinson* 11 U. C. C. P. 416) we had to consider the state of the law, and there Lord Denman's words in *Caudle* v. *Seymour* (1 Q. B. 892) are quoted:—"The magistrate's protection depends, as my brother Coleridge has observed, not on jurisdiction over the subject matter, but jurisdiction over the individual arrested;" and Coleridge, J., adds, "It is true that the magistrate here has jurisdiction over the offence in the abstract, but to give him jurisdiction in any particular case, it must be shewn that there was a proper charge upon oath in that case."

The learned judge in the court below felt naturally embarrassed in this very peculiar case, and in his very carefully considered judgment at last, with much hesitation, decided in favour of the magistrate, and that the case was governed by the first section of the act.

The fact that there was an information on oath duly laid, charging the defendant with felony, no doubt creates considerable doubt in every mind.

After much reflection, we have arrived at the conclusion that, assuming everything in favour of the defendant, and that all was regular up to the appearance of plaintiff before him to answer the charge, the commitment for trial of the plaintiff without the appearance of the prosecutor or examination of any witness, or statutable examination of the plaintiff, or confession by him as allowed by law, was an act of defendant either wholly without or in excess of jurisdiction, and that he is liable therefor in trespass.

The way to test the matter seems to me to be this: by the information duly laid the defendant had power over the plaintiff's person to bring him before him on the charge. When the plaintiff was before him, what further power had he over him? He could remand for a reasonable time for good cause, or he could proceed under what for three centuries, since the days of Philip and Mary, was the law of England, and is in substance our law now. "Before he shall commit or send such prisoner to ward, he shall take the examination of such prisoner or information of those that bring him."

But without remanding, and without any regular examination, or without confronting the witnesses and the accused, has he any jurisdiction over the plaintiff's person to send him to gaol to await his trial?

We have seen that even where he might remand, if the remand was for an unreasonable time it was wholly void, and the magistrate a trespasser. We see that this case answers the position taken by Erle, J., and Coleridge, J., that the second section is to be confined "to cases in which the act by which the plaintiff is injured is an act in excess of jurisdiction," as where the justice had the plaintiff legally before him and legally convicted him, and legally ordered distress of his goods, but illegally added the alternative of the stocks. As he never had been put into the stocks the justice was not liable in trespass. Had the plaintiff been put in the stocks trespass would have lain (*Barton* v. *Bricknell*, 13 Q. B. 396, already cited.)

We can see no jurisdiction whatever in a justice to commit for trial a person brought before him on a charge of felony, no one appearing to prosecute, no examination of witnesses, and no confession under the statute or otherwise It is suggested that the plaintiff may have confessed his guilt to defendant The answer is that the evidence suggests nothing of the kind.

We have not overlooked the language of the third section of the statute, and consider that it does not affect the conclusion at which we arrive.

We gather from the evidence that there is no imputation of bad faith or improper motive in the justice, but the fact remains that the plaintiff has suffered an illegal imprisonment. If the law be so tender of the personal liberty as to make (as in *Davis* v. *Capper*, already referred to) a justice acquitted of all bad motive, a trespasser for remanding or committing for an unreasonable time, it is difficult to see why as great a liability should not be incurred for a totally unwarranted commitment for trial at an assize or sessions that might not be held for months.

We are willing to see every reasonable protection given to magistrates, but we think the law would be in a singularly unsatisfactory state if there could be no redress for such an injury, committed in clear violation of the precise words of the statute law, although without improper motive in the person causing the injury.

The statute law gives the most ample protection to magistrates, and really leaves many grievous wrongs committed by them in exercising their great powers wholly without redress. We are unwilling to see this freedom from responsibility extended further than it has heretofore been. If the defendant here has incurred no civil responsibility, we hardly see how any redress can be hereafter had for heavy injuries to liberty and property, committed possibly from mere ignorance, but no less damaging in their results than if committed from vindictive or malicious motives.

The law strives anxiously to guard persons from being committed to gaol except on a clearly defined charge made by witnesses brought face to face with the accused, and we cannot accede to the argument that what was done by this defendant can in any view be considered as a mere error in judgment, as an "act done by him in the execution of his duty with respect to any matter within his jurisdiction." We think it falls within the second section, and that this appeal must be allowed, and the rule for setting aside the nonsuit in the court below should have been made absolute.

Appeal allowed.

See *McDonald* v. *Bulwer*, 11 L. T. Rep. N S. 27, in the Court of Common Pleas, in Ireland, following *Lawrenson* v. *Hill* above cited, p. 648.

In the matter of Alanson C. Sheley and The Corporation of the Town of Windsor.

By-law—Delay in moving against.

The court, because of the long delay in moving, refused a rule nisi to quash a by-law passed eighteen months before, for licensing and regulating houses of public entertainment, the objection being that it was not before the final passing approved by the electors.

O'Connor applied for a rule *nisi* to quash a by-law of this corporation, passed on the 25th of February, 1863, entitled "A by-law for licensing and regulating houses of public entertainment, and for other purposes therein mentioned," or to quash sections 2 and 6 thereof, on the ground that the same was not before the final passing thereof approved by the electors of the municipality, as