

Province of Nova Scotia.

SUPREME COURT.

Full Court.]

JORDAN v. McDONALD.

[March 8.

Constable—Arrest under warrant not indorsed for service out of jurisdiction—Evidence—Vindictive damages—Error in instructions to jury—Crim. Code, ss. 25, 242, 552.

Plaintiff claimed damages for an alleged unlawful assault by defendant with the assistance of others in the city of Halifax, and his arrest and detention in jail. The defence was that plaintiff had been guilty of the offence of assaulting, cutting and wounding one P., a policeman of the town of W., while in the discharge of his duty, and that the assault and imprisonment complained of were committed in arresting plaintiff under a warrant issued by the stipendiary magistrate of the town of W. for his apprehension to answer such charge. At the time of the arrest the warrant had not been endorsed by any magistrate having jurisdiction in the county of Halifax so as to enable an arrest to be made under it in such county. The jury having returned a verdict in plaintiff's favor for \$250 damages, defendant applied for a new trial.

The Criminal Code, s. 25, provides that "If any offence for which the offender may be arrested without warrant has been committed, anyone who, on reasonable and probable grounds, believes that any person is guilty of that offence, is justified in arresting him without warrant, whether such person is guilty or not."

Held, 1. The words "may be" in this section refer to the provisions of the code which authorize arrest without warrant, including s. 242, under which a person not a peace officer is enabled to arrest without warrant a person who, on reasonable grounds, he believes is guilty of the offence of unlawfully wounding, where such offence has in fact been committed, s. 242 being one of the "following sections" referred to in s. 552.

2. Defendant in making the arrest in the county of Halifax, under a warrant not endorsed for execution in that county, could not be regarded as a peace officer, and therefore was a person within the meaning of s. 242.

3. It was open to defendant to contend that the arrest was made outside of and independent of the warrant, and to show that at the time the arrest was made he was aware that plaintiff had committed the offence of unlawfully wounding.

4. If defendant could not justify under the warrant by reason of the absence of the necessary endorsement, but the circumstances were such as to justify him in making the arrest without a warrant, he had "good authority" for so doing.

Evidence was tendered to show that plaintiff had to the knowledge of defendant been guilty of the offence of unlawfully wounding P., a constable of the town of W., while in the discharge of his duty, and that he had been for sometime evading arrest, and that there was reason to fear that if he was not arrested at the time he was he would escape.