it follows that the incorporation of companies for objects other than provincial falls within the general powers of the Parliament of Canada. But it by no means follows (unless indeed the view of the learned Judge is right as to the scope of the words "the regulation of trade and commerce") that because the Dominion Parliament had alone the right to create a corporation to carry on business throughout the Dominion that it alone has the right to regulate its contracts in each of the provinces. Suppose the Dominion Parliament were to incorporate a company, with power, among other things, to purchase and hold lands throughout Canada in mortmain, it could scarcely be contended if such a company were to carry on business in a province where a law against holding land in mortmain prevailed (each province having exclusive legislative power over "property and civil rights in the province" that it could hold land in that province in contravention of the provincial legislation; and, if a company were incorporated for the sole purpose of purchasing and holding land in the Dominion, it might happen that it could do no business in any part of it, by reason of all the provinces having passed Mortmain Acts, though the corporation would still exist and preserve its status as a corporate body.

On the best consideration they have been able to give to the arguments addressed to them and to the judgments of the learned judges in Canada, their Lordships have come to the conclusion that the Act in question is valid.

Their Lordships have now to consider separately the two appeals.

(Continued on p. 33).

COURT OF REVIEW.

MONTREAL, December 24, 1881.

JOHNSON, RAINVILLE, JETTÉ, JJ.

[From S.C., St. Hyacinthe.

ROY v. PAGÉ et al.

Justice of the Peace—Trespass.

A magistrate acting within the limit of his authority and without malice is not liable to an action of trespass, though he may have given an erroneous judgment.

The judgment under Review was rendered by the Superior Court, St. Hyacinthe, (Sicotte, J.) July 5, 1881.

JOHNSON, J. This was an action of trespass against three magistrates and also against the complainant in a case before them, in which they had convicted the present plaintiff of an assault, and had imposed a fine, and the payment of costs, without fixing in the conviction the term of imprisonment due in case the fine and costs were not paid. Subsequently, the fine not being paid, they awarded imprisonment, and he was incarcerated under their warrant, but got out of prison on a writ of *habeas corpus*, and immediately brought his action against the magistrates, and also against Pagé who had prosecuted him.

It is not necessary here to go into the question of the legality or illegality of the cause of detention expressed in the commitment. Assuming it to be, as was held by the learned judge before whom the writ was returned, insufficient in law, the question would still remain what constitutes a sufficient ground of action against justices of the peace under such circumstances. In the case which gave rise to the present action, they were acting within the limit of their authority; and the utmost contended for against them is that they acted in their magisterial office contrary to law, in issuing a warrant of commitment to prison without the term of imprisonment having been fixed in the conviction. We heard all the plaintiff had to say, and we dispensed with argument for the defendant. Therefore we have nothing to expound upon points that have been discussed; but on the plaintiff's own showing we are all clear that he has no case to bring into court. The general rule of law as to actions of trespass against persons having a limited authority is, that if they do an act beyond the limit of their authority, they thereby subject themselves to an action; but if the act be done within the limit of their authority, although it may be done through an erroneous or mistaken judgment, they are not liable. (See *Dodswell* v. *Impey*, 1 B. & C. 169, and *Lowther* v. *Radnor*, 8 East, 113, and *Mills* v. *Collett*, 6 Bingh. 85.) As to Pagé's liability under any circumstances, it is not easy to see on what principle it can be made to rest except upon an alleged abuse of legal process; and there is no shadow of proof of malice or want of probable cause either in his case, or in that of the justices. The learned judge in the Superior Court held that the magistrate had jurisdiction over the case, and there was no proof of malice whatever. On that point we are here unanimously of the same opinion. As to the legality of the imprisonment, it is not necessary to say anything; but I should wish to be understood, however, as not implying that there was anything illegal, or even irregular, in it under section 43 of the 32 & 33 Vic., c. 20, for the fine and costs have to be paid immediately unless a delay is granted, which was not granted here. Again, I would draw attention to the 71st sec. of c. 31, 32-33 Vic. Under it, *no warrant of commitment is to be held void by reason of any defect therein, if it be alleged therein that the party has been convicted, and if there is a valid conviction.* So that the learned judge was, in my opinion, extremely indulgent in enlarging the prisoner under the *habeas corpus*.

Judgment confirmed.

De la Bruère & Co. for plaintiff.
H. Mercier, Q. C., for defendants.