

be very gross or injurious," *Hiss v. the State*, 24 Md. 556. But they are not allowed to act in wanton disregard of the law. In *Hall v. Hall*, 6 G. & J. 386, it was observed that if a magistrate issue a warrant to one officer, who executes and returns it, and produces the body of the party, who is recognized or discharged, and before the return-day the magistrate directs the same warrant to another officer, who, without knowledge of the previous arrest, again arrests the party, he would be justified although the magistrate's conduct would be illegal. See the same case as to the protection of constables in execution of a warrant directed to them. So in *Day v. Day*, 4 Md. 262, it was held that, even if it were conceded that a justice of the peace may himself make an arrest for a misdemeanor committed upon the view (see also *Hazeldine v. Grove*, *supra*), yet it ought to appear, for the future protection of the party arrested, that *at the time of the arrest* the justice acted and professed to act in his official capacity. Any other rule might enable a person in the commission to excuse his tortious acts, under the plea of a mistake in judgment in the discharge of the judicial duties of his office. On the other hand, where an inferior judge has jurisdiction and gives a wrong judgment, neither he nor the plaintiff in the action are trespassers in enforcing the judgment so long as it remains unreversed and unsatisfied, nor can the judgment be controverted in evidence, *Fawcett v. Fowles*, 7 B. & C. 394. And so in *Deal v. Harris*, 8 Md. 40, it was considered, that the mere fact that a party was discharged under the insolvent laws did not necessarily present a case of want of jurisdiction in a justice to give judgment against him on a cause of action, which accrued prior to his application.

441 Form of action.—*An action against a justice in a matter, of which by law he has no jurisdiction, or in which he exceeds his jurisdiction, is properly brought in trespass; but an action against him for a matter within his jurisdiction must be in case, and there malice and want of probable cause must be alleged and proved. "The general distinction is this: where the immediate act of imprisonment proceeds from the defendant, the action must be trespass and trespass only; but where the act of imprisonment by one person is in consequence of information from another, there an action on the case is the proper remedy, because the injury is sustained in consequence of the wrongful act of that other. . . . Where a person is committed to prison by the warrant of a justice without any accusation, some person is guilty of false imprisonment, and it must be the imprisonment of the justice, who is the immediate and not the remote cause of it," *per Ashhurst J.* in *Morgan v. Hughes*, 2 T. R. 231. So also in *Davis v. Capper*, 10 B. & C. 28, an action of trespass for false imprisonment against a justice who had committed the plaintiff for re-examination for a period of fourteen days, and the jury found that the commitment was *bona fide* and without any improper motive, but that the time for which the commitment was made was unreasonable, the Court said that trespass was the proper form of action, that a special action on the case could not have been maintained, because that must be founded on some improper motive which the jury had negatived. The Court went on to say that even if the commitment were void only for so much of the time as was unreasonable, trespass would be maintainable, for every continuance of a party in custody is a new imprisonment and a new trespass, but it was by far