Some other questions were raised in the argument of this cause, but as they relate principally to the sufficiency of the testimony to authorize the finding of the jury, are not of a character to require the interfering hand of this court. The judgment below must be reversed, the appellant recover his costs, and the cause remanded to the court below for new proceedings to be had, not inconsistent with this opinion.

Judgment reversed.

S. MOORE, Plaintiff in Error, *v.* J. WATTS, S. CROCKER AND M. WELLS, Defendants in Error.

ERROR TO ST. CLAIR.

A warrant for a felony founded upon an affidavit which stated "that A. B. entered the inclosure of C. D, and carried off her grain," is no justification to the officer who issued it, nor to the officer who executed it, as the affidavit contains no words importing a felony. All the parties to such a warrant are trespassers.

Opinion of the Court by Chief Justice REYNOLDS. This is an action of assault and battery and false imprisonment.

The defendants pleaded specially in substance, that the said Watts being a justice of the peace—that the defendant, Wells, appeared before the said justice, and made oath that the said plaintiff had entered her inclosure and carried off a quantity of her grain—that thereupon the said justice issued his warrant, upon which the plaintiff was arrested and committed. Under this proceeding the defendant justifies.

The plaintiff replied, that the assault and battery and false imprisonment was committed of the defendants' own wrong, and without any legal process, founded upon a charge of felony, sworn to before said justice. Upon this replication issue was taken. The affidavit, warrant and commitment, were read in evidence to the jury, and the court instructed the jury that they were a complete justification to the defendants. It is to this instruction the plaintiff excepts, and we are called upon to say whether it is correct. We will here remark that the plea contains an averment that the affidavit meant, that the plaintiff feloniously entered the inclosure of the said Wells, and carried off her grain. This kind of innuendo, if we may use the expression, can not alter the sense, or extend the meaning of the words. We will now consider, does the affidavit give to the justice jurisdiction? If it does, then was the officer who acted under it, justified. By the 17th section

of the act defining the powers and duties of justices of the peace, it is provided,

That it shall be lawful for any justice of the peace, upon oath being made before him that any person hath committed, or that there are just grounds to suspect that he or she hath committed any criminal offense within his county, to issue his warrant, &c. Can this provision be construed to extend to mere civil trespasses? we think not: and the affidavit shows nothing more. Then we must say the court erred in instructing the jury that the affidavit and proceedings under it justified the defendants. If the justice had not jurisdiction, and this is apparent, both from the affidavit and warrant, the officer who acts under his process, can not thereby claim to be justified. Let the judgment of the court below be reversed, the plaintiff recover his costs, and the cause remanded for new proceedings to be had not inconsistent with this opinion. (1)

Judgment reversed.

(1) There is some conflict in the authorities as to what extent an officer is justified in serving process which is void; but we think the weight of decisions establishes this principle—that if the process is, on its face, legal, it is a full justification to the officer serving it, unless he had notice outside of the writ that it was irregular. But if the process itself contains evidence of its irregularity, or if the officer is notified in any other manner, then he will be a trespasser. Such clearly is the purport of the decisions in this state *Barnes* v. *Barber*, 1 Gilm., 401. *McDonald* v. *Wilkie*, 13 Ill., 25. *Stafford* v. *Low*, 20 Ill., 152. In this last case the court, in speaking of a capias, said: "But like any other *void* process which is regular on its face, it would protect the officer executing it, as he need look no further than to the writ." See also the following cases. *Lattin* v. *Smith*, post. *Collins* v. *Waggoner*, id. *Flack et al.* v. *Ankeny*, id. *Hull* v. *Blaisdell et al.*, 1 Scam., 332. *England* v. *Clark*, 4 Scam., 487. *Wentworth* v. *The People*, id., 554. *Parker* v. *Smith et al.*, 1 Gilm., 414. *Bybee* v. *Ashby*, 2 Gilm., 165 *Stow* v. *Gregory*, 3 Gilm., 576. *Guyer* v. *Andrews*, 11 Ill., 496. *Cook* v. *Miller*, id., 610. *Teft* v. *Ashbaugh*, 13 Ill., 603. *Martin* v. *Walker*, 15 Ill., 378.

Though the rule is believed to be as stated, yet the decision was unquestionably correct in this case; for the plea sets out the affidavit, and shows the insufficiency of the proceedings in issuing the warrant, but does not pretend to allege a want of knowledge of such irregularity in the defendant.

Although an officer executing a *ca. sa.* upon an insufficient affidavit may protect himself by pleading the process, yet if he should refuse to execute it he would not be liable; nor would he be liable for an escape under it. *Tuttle* v. *Wilson*, 24 Ill., 553.