

The Ontario Weekly Notes

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APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

JANUARY 10TH, 1921.

*HICKS v. McCUNE.

Trespass—Search of Premises under Search-warrant—Information upon which Warrant Issued not Shewing Grounds of Suspicion—Criminal Code, sec. 629, and Form 1—Jurisdiction of Magistrate under Statute and at Common Law—Form of Action—Trespass or on the Case—Warrant, whether Void or Merely Irregular—Verdict of Jury—Damages—Complainant Taking Part in Search—Judge's Charge—Dismissal of Claim for Malicious Procedure.

Appeal by the defendant and cross-appeal by the plaintiff from the judgment of ROSE, J., upon the verdict of a jury, in an action for damages for wrongful dismissal and other wrongs.

The plaintiff alleged that he had been wrongfully dismissed from his employment with the defendant and that the defendant had, falsely and maliciously and without reasonable and probable cause, sworn to an information charging the plaintiff with stealing a number of tools, etc., and had also caused to be issued a search-warrant directing that the plaintiff's premises should be searched for these tools, and further that the defendant, in the company of two police officers, had unlawfully trespassed upon the premises of the plaintiff and his person and made a search.

At the trial, the claim of the plaintiff for wrongful dismissal was disposed of adversely to him, and the claim for malicious procedure in making the affidavit and issuing the search-warrant was also dismissed, the learned trial Judge holding that the plaintiff had not shewn that the defendant had not reasonable and probable cause for what he did. The trial then proceeded

* This case and all others so marked to be reported in the Ontario Law Reports.