

behalf of himself and his neighbours, to clean out a spring on a highway, to be used for watering cattle. As soon as the spring was cleared, the plaintiffs filled it in. The defendant Murr, as a peace officer and constable, upon the complaint of one Hishon and others, laid an information against plaintiffs for having wilfully committed damage, injury, or spoil to or upon the highway. Plaintiffs allege that after the conviction, which was made by a Justice of the Peace, and which was entirely illegal to his and defendants' knowledge, and which he refused to enforce until indemnified by a resolution of defendant corporation to do so, the Justice issued his warrant to defendant Murr, and plaintiffs were wrongfully arrested, fined, and imprisoned. The Judge below held, that under sec. 15 *et seq.* of the Criminal Code, the defendant Murr, acting as a constable in pursuance of a warrant, was not a trespasser, because the conviction was bad; that acting without malice and reasonably, he was entitled to the protection afforded by R. S. O. ch. 88, as to notice of action, and time within which it must be brought, and that the defendant corporation were liable to repay the fine imposed.

J. P. Mabee, K.C., for plaintiffs.

G. G. McPherson, K.C., for defendants.

The judgment of the Divisional Court (BOYD, C., FERGUSON, J.) was delivered by BOYD, C.—The defendant Murr is not liable. It is shown that defendant is a constable and acted as such, and he is entitled to all the protection extended by the law to public officers of the peace. The warrant being bad on its face, the officer is relieved under sec. 21 of the Code, but is still liable to civil action, but in regard to it he is protected by R. S. O. ch. 88, which is pleaded. The action has not been brought within six months, nor has notice been given: see also Code secs. 975, 976, and 980. *Ex p. McClean*, 3 N. B. R. 100, is contrary to *Reg. v. Hefferman*, 13 O. R. 616. Then as to the corporation:—There is no proof as regards it, that the Council had the conviction or warrant before them, or that they had any knowledge of its illegality on the ground of a joint fine, and there is no proof that the Council was not acting *bona fide* for the protection of the spring on the highway. There is no evidence of malice. But assume that imputed knowledge of the invalid conviction and warrant is to be attributed to the corporation, then their resolution is *ultra vires*. It transcends the powers of municipal corporations to award funds for illegal purposes. The legal consequences of any illegal conduct must be visited on the offending members: *Ferguson*