

NOVA SCOTIA.

FULL COURT.

DECEMBER 11TH, 1909.

CHENG FUN v. CAMPBELL.

False Imprisonment—Action for Damages—Chinese Immigration Act—Arrest of Defendant without Warrant—Information—Trial—Conviction Quashed—Fine Directed to be Returned to Defendant—Jurisdiction—Erroneous Proceedings—Liability of Officers Executing Process.

Appeal from that part of the judgment of LONGLEY, J., in favour of plaintiff awarding plaintiff, as part of the damages for illegal imprisonment, the sum of \$100 fine, paid in connection with an alleged violation of the Chinese Immigration Act.

R. T. MacIlreath, in support of appeal.

W. F. O'Connor and F. McDonald, contra.

GRAHAM, E.J., read the judgment of the Court.

This is an action for damages for false imprisonment. The claims for malicious prosecution were withdrawn at the trial. There are eight similar actions in all against the same defendant, brought by eight different Chinamen, out of a company of seventeen Chinamen who had been prosecuted under the Chinese Immigration Act, R. S. C., ch. 95, for not paying the head tax of \$500 on each of them at the port at which they entered Canada.

By sec. 7 of that Act, it is provided that: "Every person of Chinese origin . . . shall pay into the consolidated revenue fund of Canada on entering Canada, at the port or place of entry, a tax of \$500 each, except," etc. (Certain exemptions.)

Section 8 provides for giving a certificate of the payment to each Chinaman who pays the tax.

By sec. 27 it is provided that: "Every person of Chinese origin who wilfully evades or attempts to evade any of the provisions of this Act as respects the payment of this tax, by personating any other individual, or who wilfully makes use of any forged or fraudulent certificate to evade the provisions of this Act, and every person who wilfully aids or