

NOVA SCOTIA.

SUPREME COURT.

JUNE 1ST, 1909.

ROSS McLEAN v. HENRY C. GASS.

Action for False Imprisonment and Malicious Prosecution—Prosecution under N. S. Liquor License Act—Search Warrant—Interference by Plaintiff with Execution of Warrant—Empty Threats—Wrongful Arrest—Damages.

J. B. Bill, for plaintiff.

T. D. McLellan, K.C., and A. C. Patterson, for defendant.

TOWNSHEND, C.J.:—This is an action for false imprisonment and malicious prosecution arising out of the same matter. With regard to the part relating to malicious prosecution, I held at the trial that there was no want of reasonable and probable cause, and for this reason an action on this ground could not be maintained. The defendant is a police officer for the town of Truro and in that capacity laid an information under the Liquor License Act against Abner McNutt, proprietor of the Windsor Hotel, before Stipendiary Magistrate Crowe, from whom he obtained a warrant on the 2nd day of March, 1907, authorising him to search the hotel for liquor. Armed with this warrant he took with him License Inspector Johnson, and Inspector Smith and another police officer, Snyder, entered the premises, made a search and found nothing in the shape of liquor. Plaintiff was then boarding at the hotel, as he had been for some years before, and had a bedroom in which he kept a trunk. In the course of the search Johnson entered plaintiff's room, opened and searched the trunk and place, to his satisfaction that no liquor was to be found there. While he was in the act of making the search of plaintiff's trunk, the plaintiff came up to the room, and used very violent language and threats against Johnson—saying that he would shoot him if he had pistols, but he did not actually interfere, or use any force or effort to prevent Johnson carrying out his purpose. The row, which I have no doubt plaintiff created by his loud and foul language, brought the defendant upstairs, and apparently on his remonstrating with plaintiff, the latter abused him in much the same way,