

(2) There was no evidence to warrant this submission to the jury of the question whether Mitchell in doing what he did was acting within the scope of his employment so as to make the defendants responsible for his action.

Held, 1. If the law is as it was laid down in *Hamilton v. Cousineau*, 19 A.R. 203, it may be that the Chief Justice was right in leaving to the jury the question which he put to them as to the honest belief of Mitchell, but the court was of the opinion that it was not, and that the effect of *Archibald v. McLaren*, 21 S.C.R. 515, was to overrule that case and to settle the law as far as the courts of this province are concerned in accordance with the views expressed by Armour, C.J. and Street, J., in the Divisional Court. Nothing appeared upon the evidence justifying even the suspicion much less the finding that Mitchell did not at the time he laid the information for forgery honestly believe the plaintiff to be guilty. So far as appeared Mitchell did not know him even by sight and had no motive for making a false charge against him, nor was there anything which warranted the submission to the jury of the question as to the defendants having taken reasonable care to ascertain the true fact of the case before Mitchell laid the information.

2. As to the prosecution for theft it should have been ruled that the plaintiff had established want of reasonable and probable cause.

3. Though the expert's opinion was that neither the receipt nor the order had been forged by the plaintiff, there was the evidence of the two employees that the plaintiff was the person who presented the forged order and signed the receipt.

H. H. Dewart, K.C., and *J. S. Lundy*, for plaintiff. *J. M. Ferguson*, for defendants.

Province of Nova Scotia.

SUPREME COURT.

Graham, E.J.]

[July 29.]

IN RE THOMAS McNUTT.

*Collection Act—Commitment for fraud—Form of Warrant—
Commission—Presumption as to acts of.*

A warrant of commitment to gaol for fraud under the Collection Act, R.S. 1900, c. 182 was attacked on the ground