

Per PATTERSON, J.A.—The jury having left no fact undetermined, the plaintiff was entitled to judgment, which might properly be entered for nominal damages with full costs.

ERICKSON v. BRAND.

Malicious arrest—Capias ad respondendum—Necessity to set aside before bringing action—Reasonable and probable cause—Duty of judge.

In an action for malicious arrest on the ground of want of reasonable and probable cause, to enable the plaintiff to recover it is not necessary to show that the *ca. re.*, or the judge's order on which the same was obtained, has been set aside.

The defendant in his application for an order for the *ca. re.* by his affidavit made out a *prima facie* case, but certain facts and circumstances, which it was alleged he was aware of, were omitted therefrom, and which it was contended, might, if stated, have satisfied the judge granting the order, that, although the plaintiff was about to depart from the Province, it was not with *intent* to defraud, etc. At the trial the judge decided the question of reasonable and probable cause, without leaving to the jury any question as to whether the statements in the defendant's affidavit fairly stated the case.

Held, that before deciding on the question of reasonable and probable cause, the judge should have seen that the facts on which he ruled, were either proved without contradiction, or admitted or found by the jury.

Burton, J.A., dissentiente.

Patterson, J.A., dubitante.

HIGH COURT OF JUSTICE FOR ONTARIO.

Chancery Division.

Boyd, C.] April 9.

HARRISON v. SPENCER.

Will—Period of distribution—Thellusion's Act—39-40 Geo. III. c. 9.

By a will of personal estate, after a life estate had been given to the testator's widow, it was

provided by a residuary clause that the property should be equally distributed amongst the testator's nephews and nieces who should be alive at the time of his death. At the time of this action, the widow of the testator was still alive, but some of the nephews and nieces had died.

Held, that the will gave a vested interest to such nephews and nieces as should be alive at the time of the testator's death, but the period of distribution was the death of the widow; and the bequest to the nephews and nieces was subject to be divested as to those of them who died should die before the said period of distribution in favour of their representatives, who were entitled to take in substitution for the original legatees, and for this reason it was to be inferred that by heirs at law the testator meant to express that the benefit was to go to the persons who would inherit the personal estate—that is to say, the next of kin.

Held, also, that the Act against accumulations, commonly called the Thellusion Act, 39-40 Geo. III. c. 9, which was passed after the Statute, 32 Geo. III. c. 1, by which English law was introduced into Canada, and which did not extend in terms to the colonies, is not in force in this Province, where the law appears to be as it was in England before that Statute.

Ferguson, J.]

[Mar. 15.]

BARBEAU v. THE ST. CATHARINES AND NIAGARA CENTRAL RAILWAY COMPANY.

Railways and Railway Companies—Expropriation of lands—Dominion Railway Act or Provincial Railway Act—Work for general advantage of Canada—Notice.

In an application for an injunction to restrain the defendants, who were incorporated by Statutes of the Ontario Legislature, from applying to a county judge for a warrant for possession of certain lands required by them, and being expropriated by them under the provisions of the Ontario Railway Act, on the ground that the defendants' railway had been declared a work for the general advantage of Canada, and that no notice of expropriation had been served, as required by the provisions of the Ontario Railway Act.