

the defendant seized and caused to be destroyed a quantity of liquor of the plaintiff's of about the value of \$60; "and the plaintiff claims from the defendant the return of the fine and costs before mentioned as money had and received by the defendant to and for the use of the plaintiff, and a further sum not to exceed in the whole the jurisdiction of a County or District Court for damages in respect of the grievances mentioned, etc., etc."

The defendant said that if he did convict the plaintiff, which he did not admit, he did so under R.S.C. 1907, ch. 92, that the plaintiff incurred the costs uselessly and voluntarily, and that if the defendant destroyed the liquor, which he did not admit, he was justified in doing so.

The case was tried in the District Court at North Bay, the 23rd November, before Valin, Dist. J., and a jury—at the close of the plaintiff's case the learned Judge allowed an amendment to set up R.S.O. 1897, ch. 88, sec. 8. It appeared that no notice of action had been given, and judgment of nonsuit was given, which was entered as a judgment dismissing the action with costs. From this judgment the plaintiff appealed.

The appeal was heard in part before MULOCK, C.J.Ex.D., CLUTE and RIDDELL, JJ.: but by consent of counsel the argument was continued before CLUTE and RIDDELL, JJ., who disposed of the appeal.

J. B. Mackenzie, for the plaintiff.

J. M. Ferguson, for the defendant.

CLUTE, J.:—The statement of claim sets out in effect that on the 23rd of September, 1909, the defendant convicted the plaintiff as for a second offence against Statutes of Canada, 1907, ch. 9, and imposed a fine upon the plaintiff of \$100, together with the sum of \$10 costs, which the plaintiff then and there under duress of said conviction paid to the said defendant.

It is further charged that the defendant had previously caused the plaintiff to be apprehended by a constable of the Provisional Judicial District of Nipissing and brought before the defendant, to answer a charge of having committed an offence under the said statute, and thereby did assault and falsely imprison the plaintiff. A claim is also made for a fruitless attempt to set aside the conviction, and also for the destruction of a certain quantity of liquor of the value of \$60. The plaintiff claims return of the fine and costs as money had and received to the use of the plaintiff, and damages for the other causes of action above alleged.