

Tooth v. Frederick, 14 P.R. 287, commented on and not followed.

Robertson v. Coulton, 9 P.R. 16, approved and followed.

(3) The fact that the plaintiff, having numerous creditors, including the defendant, in and being a resident of Ontario, left it without paying them, and went to reside permanently in the United States, whether he left openly or secretly, and whether he announced his departure and intentions beforehand or concealed them, and that he came back to Ontario for a temporary purpose, intending to return to the United States, afforded not only reasonable and probable cause for his arrest, but fully justified it.

(4) But if the action were viewed as one for imposing upon the judge by some false statement in the affidavit to hold to bail, and thereby inducing him to grant the order for arrest, the fact falsely suggested or suppressed must be a material one: the judge to consider in granting the order, and the burden lay upon the plaintiff of showing that the judge was imposed upon. But it did not appear that any material fact had been falsely stated or suppressed, and the court should not, in the absence of the judge's own evidence, draw the inference that he understood from the use of the word "absconded" that the plaintiff had gone away secretly, if that were material.

(5) Moreover, the word "absconded" truly described the going away of the plaintiff, whether he went away secretly or openly, and he would properly be described as an absconding debtor.

FALCONBRIDGE, J., adhering to the views expressed in *Scane v. Coffey* 15 P.R. 112, was of opinion that the plaintiff had a cause of action, but thought there should be a new trial on the grounds of excessive damages and misdirection, and concurred *pro forma* in the decision of ARMOUR, C.J.

Osler, Q.C., and *M. Houston* for the plaintiff.

M. Wilson, Q.C., for the defendant.

Div'l Court.]

[March 3.

ANDERSON v. WILSON.

* *Arrest—Trespass to person—Malicious prosecution—Information—Uttering forged note—Disclosing offence—Warrant—Jurisdiction of justice of the peace.*

The defendant laid an information against the plaintiff, charging that the plaintiff "came to my house and sold me a promissory note for the amount of ninety dollars, purporting to be made against J.M. in favour of T.A., and I find out the said note to be a forgery." Upon this a warrant was issued reciting the offence in the same words, and the plaintiff was, under it, apprehended and brought before the justice of the peace who issued it, and by him committed for trial by a warrant reciting the offence in like terms. The plaintiff was tried for forging and uttering the note, and was acquitted. He thereupon brought this action for malicious prosecution and trespass to the person.

The Attorney-General refused to grant a fiat for the production of the record, and so the action for malicious prosecution had to be abandoned at the trial, but the plaintiff's counsel took the ground that no offence was charged