

had been discharged by the court in banco, under a writ of habeas corpus, on notice to the defendant, the order reciting an adjudication that the conviction was illegal and without jurisdiction (*R. v. Johnston*, 41 N.S.R. 105, 11 Can. Cr. Cas. 10) and on that application the defendant filed an affidavit against the motion. In an action by the plaintiff against the defendant in his capacity as solicitor, for false imprisonment, the trial judge withdrew it from the jury at the close of the plaintiff's case, on the ground that there was no evidence of malice, and that the defendant's privilege as a solicitor protected him.

*Held*, dismissing the plaintiff's appeal and motion for a new trial that the plaintiff could be legally sentenced to imprisonment absolute in his absence by the County Court judge on the appeal, but assuming he could not, that the action of the County Court judge in so sentencing him was a mere error which did not invalidate the conviction, and as the defendant was not shewn to have acted maliciously or officiously, he was not liable in trespass.

*Per* TOWNSHEND, C.J., dissenting, that the conviction having been adjudged illegal, and without jurisdiction by the court, on the return to the habeas corpus, and defendant being shewn to have been the instrument in procuring, enforcing and upholding the invalid conviction, he was liable in damages, and the case should be remitted for a new trial.

*J. J. Power*, K.C., for the appellant. *W. B. A. Ritchie*, K.C., contra.

NOTE.—The plaintiff has appealed from the above decision to the Judicial Committee of the Privy Council.

## Province of Manitoba.

### COURT OF APPEAL.

Full Court.]

McMANUS v. WILSON.

[April 13.]

*Set-off—Unliquidated damages—Unconnected transactions.*

Plaintiff sued for the balance due by defendant under an agreement to purchase land from one Walton, who had assigned the agreement to plaintiff. Defendant did not dispute the debt, but claimed the right to set off damages against Walton in