

The appeal was from a judgment of the Superior Court, Montreal (Mackay, J.), Oct. 25, 1879, dismissing the action of the appellant brought against the Mayor of Montreal, claiming damages for false arrest. (See 2 Legal News, p. 354, for report of the judgment below.)

In appeal the judgment was unanimously confirmed, not only on the ground of insufficiency of the notice, but on the merits.

The following opinion was by

RAMSAY, J. This is an appeal from a judgment dismissing an action of damages brought against the respondent, Mayor of Montreal, in 1878.

The declaration sets out the existence of an Orange Association, called the Loyal Orange Institution, in Montreal; that appellant was a member of this association; that the association determined "to meet as a body on the 12th of July, 1878, at their ordinary place of meeting, in the morning, and then and there to form in procession, with marshals or officers, decorated with the insignia or distinctive marks of office, to direct the march of members so formed in procession, from the place of meeting to a church chosen for the worship of the said members, in the said city of Montreal, and there to participate in religious offices consonant with the form of worship and the object of the meeting of the said members"; that it became known to the members of this association that evil-disposed persons would meet in large number, with the avowed object of committing a breach of the peace, by assaulting, beating, and otherwise ill-treating, and perhaps murdering, the said plaintiff and his said fellow-members, with the object of preventing this procession; that the appellant and his associates applied to the authorities for protection, and specially to defendant, who was then Mayor of the city of Montreal, and a Justice of the Peace, "and that the said defendant refused to adopt any means of protection as requested to do;" but, on the contrary, that he connived at the proceedings of the persons who threatened appellant and his associates, and organized a body of men, five hundred in number, as special constables, falsely pretending that it was for the purpose of keeping the peace; that on the 12th of July the respondent assembled these special constables with the avowed object of preventing the plaintiff and his fellow-members from going in procession to church;

that the special constables so assembled on the 12th of July threatened and put in jeopardy the lives of the appellant and of his associates, and he, the said appellant, was, by command of the said respondent, arrested and prevented from going to church with his fellow-members. That the appellant, in order to justify his proceedings, obtained one Murphy to make complaint before a magistrate that the Orange Association was an unlawful society; that appellant was a member of it, and that the Association had met that day with the intention of marching through certain public streets, thereby provoking to a breach of the peace; that on this complaint a warrant was granted, and the appellant arrested, as aforesaid. The declaration then relates that to avoid further imprisonment appellant was obliged to give bail; that owing to the influence of respondent he was committed for trial, and had to renew his bail, and finally that he was indicted and tried, owing to the machinations of respondent. Finally, that he was acquitted. That by all these proceedings respondent "has maliciously caused to plaintiff considerable damages," which he estimates at \$10,000, and appellant further alleges that he has given respondent notice of this action.

It will be at once apparent that this is not an ordinary action for false imprisonment, but that the respondent is charged with acts of non-feasance, as well as with mal-feasance, in the discharge of his duties as Mayor of Montreal and as a Justice of the Peace, and that the false arrest is only an incident of this wrongdoing. He is accused of having not only improperly refused his authority to protect appellant, but having exercised it to oppress and even imprison appellant, and cause him to be unjustly indicted.

There is no doubt in my mind that such an action will lie. (See the case of Kennett, Lord Mayor of London in 1780, 5 C. & P. 282; and *Rex v. Pinney*, 3 B. & Ad. 953; also *Reg. v. Neale*, 9 C. & P. 43.) And I can only express astonishment that having brought such an action, and persisted in it, appellant should now maintain that respondent is not entitled to notice as a person fulfilling a public duty or function. The whole burthen of appellant's complaint is that respondent did not do his duty as Mayor, but unlawfully and maliciously, as Mayor, caused him to be prosecuted and arrested.