

Com. Pleas Div.]

NOTES OF CANADIAN CASES.

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wife of S., returned to this Province with instructions from S. to get such statement from plaintiff and effect a settlement with him; that for some eight weeks she endeavoured constantly to get such statement from the plaintiff, but without avail; and therefore S. for such purpose was compelled to return to this province; that he discovered that plaintiff had received a sum of \$600 from a tenant of S.'s for which plaintiff was unable to account, and had also received other sums of money which he had converted to his own use, and that S. had never been able to obtain from the plaintiff payment of the said sums of money so received by him.

Held, on demurrer to the second paragraph of the statement of claim that it was good; that it set out facts which amounted to a justification, and if the defendant being so entitled to plead such facts as justification chooses to restrict their effect to the mitigation of damages he may do so.

Clement, for the demurrer.

Aylesworth, contra.

YOUNG V. NICHOL.

Malicious prosecution—Issuing search warrant—Reasonable and probable cause—Belief—Question for jury.

A robbery having been committed at the defendant's store a bill of an account due by the plaintiff to the defendant was found lying near by which from its crumpled appearance indicated that it had been carried about in some person's pocket; that from this fact the defendant suspected some one in plaintiff's house, and he caused a search warrant to be issued and plaintiff's house searched, but nothing was found therein. It appeared that this account was not sent but another similar one, and that on one occasion when a discussion had taken place as to the amount of the account the defendant produced the one in question. He said when he found the account in his store at the time of his robbery he had forgotten all about it not having been delivered to the plaintiff. The learned judge entered a verdict for defendant, holding that the plaintiff had failed to shew that the defendant acted without reasonable cause.

Held, that the question of the defendant's belief in the delivery of the account to the plaintiff should have been submitted to the jury, and therefore there must be a new trial.

Held, that an action of malicious prosecution will lie for issuing a search warrant without reasonable and probable cause.

Lount, Q.C., for the plaintiff.

McCarthy, Q.C., for the defendant.

JEFFERY V. HEWIS.

Sale of land for taxes—Invalid assessment.

In the year 1875 certain land, containing 200 acres and patented as one lot, was assessed on the resident roll as lot 114, 200 acres valued at \$1,000. In 1876-8 it was similarly assessed. In 1879 it was also so assessed, and at the same rate as in the previous years except that the quantity of land was stated to be 100 instead of 200. The whole 200 acres was occupied by a tenant who duly paid the taxes for each year including 1879. On the non-resident roll for 1879 the east half of the lot appeared assessed as 100 acres valued at \$800. By reason of the land so appearing on the non-resident roll it was returned to the county treasurer as in arrear for the taxes of the year 1879 and a sale made thereof.

Held, that the assessment was of the whole lot, and the taxes were paid on the whole lot, and the fact of it being stated that the whole lot was only 100 did not make the assessment less an assessment of the whole, and the error of putting the east half on the non-resident roll could not affect the plaintiff's rights; and therefore the tax sale was invalid.

H. H. Strathy, for the plaintiff.

O'Sullivan, for the defendant.

RE BELL TELEPHONE COMPANY.

Minister of Agriculture and Commissioner of Patents—Jurisdiction of—Ministerial functions—Examination of witnesses—Certiorari.

Held, that the Minister of Agriculture as commissioner of patents has jurisdiction, under sec. 28, Patent Act of 1872, to decide any disputes as to whether a patent has become void for the non-observance or violation of the provisions of that section; and *semble* a private