

caused to plaintiff in being "obliged to pay a large sum of money in proceedings instituted to quash the conviction by force of which, if at all, such imprisonment could have been justified." The defendants plead specially the facts leading up to the above conviction. They also plead "not guilty," and note in the margin R. S. O. 1897 ch. 88, secs. 1, 9, 14, and 15 in Graham's case, and 1, 5, 9, 14, and 15, in the other.

If I rightly apprehend Mr. Mackenzie's argument, he maintains that in cases such as the present the defendants cannot plead by setting out the defences given in the statute, but must plead "not guilty" and name in the margin those sections on which they rely.

He also complained because they have not pleaded that the conviction under which they assume to justify is still in force. But there I think he is wrong. The statement of claim does not say whether the conviction was quashed or not. Apparently the pleader wishes this to be inferred; and in support of the motion he tenders a document which does quash a conviction which is not inconsistent with the one set up in the statements of defence. But, if it is material to the plaintiff's case to prove this fact, it must be done at the trial, and it should be pleaded in reply.

The defences on their face are neither irrelevant nor embarrassing. Unless the conviction is proved to have been quashed, the actions must fail. So far nothing appears in the pleadings to shew how this is.

In support of the motion were cited, among other cases, *Bond v. Conmee*, 15 O. R. 716, and *McKay v. Cummings*, 6 O. R. 400. The first of these only decides that if "not guilty by statute" is pleaded, the sections relied on must be noted in the margin, and no others can be invoked. The other decides that if "not guilty by statute" is not pleaded, then the statute will not avail the defendant, unless the defence is so framed as substantially to set it up. I do not see how these support the motion. They seem to me to have the contrary effect.

Reliance was also placed on *Van Natter v. Buffalo and Lake Huron R. W. Co.*, 27 U. C. R. 581; but it does not seem to be relevant to the present motion.

The motion, in my opinion, must be dismissed with costs to defendants in the cause.