

2. In such a case the balance of convenience must be considered, and in this case the balance of convenience was in favour of continuing the restraining order.

*Semble.* There is no rule or authority to the effect that as a pre-requisite to suing an association or class of individuals in the name of some of them an order of the court or a judge must be obtained authorizing this to be done.

*O'Connor, K.C., for appeal. Mellish, K.C., and J. J. Ritchie, K.C., contra.*

Full Court.]

[Dec. 3, 1910.

SAM CHAK v. CAMPBELL.

*False arrest—Action for—Damages—Evidence in mitigation—Receivable in absence of plea—Jury—Verdict of—Reasonableness of.*

On the trial of an action by plaintiff claiming damages for false arrest, for loss of time during his detention in jail and for solicitors' fees paid in connection with procuring his discharge, plaintiff failed to appear on the trial to prove the damages claimed but his solicitor stated that the expenses incurred in connection with the discharge were something like \$50. Evidence was given in mitigation of damages to shew that plaintiff's arrest and detention were due to an effort on his part to evade the provisions of the Chinese Immigration Act, R.S.C. c. 95 s. 7, in that he being a person of Chinese origin attempted to enter Canada without payment of the tax required in such cases.

*Held,* that such evidence was receivable without a plea in mitigation of damages and that it was proper evidence for the consideration of the jury in fixing the damages, if any, to which plaintiff was entitled and that they were not subject to limitation or control as to the degree of effect that would give to it.

The jury having awarded plaintiff one dollar damages,

*Held,* that it could not be said under the circumstances that this was not a conclusion at which reasonable men could arrive.

MEAGHER and RUSSELL, JJ., dissented, holding that the detention before plaintiff was brought to trial was unreasonable and that he was entitled to recover damages for such detention with costs of action and trial.

*O'Connor, K.C., and F. Macdonald, for appeal. Macilreith, contra.*