

only an allegation, which, if not denied, would be taken as admitted if it were the basis of an action; it is an allegation that is supported by an oath, and there is therefore an end of the matter as far as the fact goes. Then as to the time. The term in which this happened has elapsed; but I see difficulty in laying down any iron rule on that head. The Court is here to protect the rights of the parties, and where we see we can do so, even not during the same term, without violating any rule, or any right, we think we ought to do so. Therefore we grant the motion upon payment of costs, and order the record to be brought before us. We merely desire to add that the right course generally in all these cases is the *requête civile*, and not a motion.

M. McLeod for plaintiff.

L. N. P. Coutlee for defendants.

SUPERIOR COURT.

MONTREAL, NOV. 29, 1881.

Before TORRANCE, J.

LEBEL V. PARADIS *et al.*

False arrest — Probable cause.

A larceny of bank bills of \$50 and \$20 had been committed, and persons in the dress of workmen were observed offering bills of the above denominations. Held, that there was probable cause for their arrest, and the policemen who made the arrest were freed from liability.

This was an action of damages for maliciously arresting the plaintiff, without probable cause. The plea was that the arrest was made on reasonable and probable cause. The defendants were the Chief of Police and three constables of the city of Montreal.

Early in the month of November last, a sum of \$1,200 in bills of \$20 and \$50 of the Banque Jacques-Cartier had been stolen from the office of Messrs. Lacoste & Globensky, advocates, of this city. Notice had been given to the police, and among others to the defendants, and they were on the *qui vive*. On the morning of the arrest, the plaintiff, accompanied by others in the garb of workmen, entered the Jacques Cartier Bank in the city, and presented to the clerk bills of the Bank of the denominations of \$20 and \$50, for which they asked change. Mr. Brunet, the assistant cashier, was informed, and knowing of the larceny of bills at the office of

Messrs. Lacoste & Globensky, he at once hurried off to the office of the Police, and told the police of the visit at the bank, and said that the men required to be watched. They were seen entering into a tavern near the Court House for refreshment, and on their coming out, being watched, were arrested in the vicinity of the Police office, and in the office interrogated instantaneously by the Chief of Police. Their explanation was that they were employees of the Quebec & Occidental Railway, and had come into town for their pay, or to have it changed, and the bills they had were received from the company. The explanation was considered satisfactory, and they were at once discharged.

PER CURIAM. The Court here sits as a jury, and it has to decide whether the plea of the defendants that there was probable cause for the arrest of the plaintiff without a warrant was made out. There is evidence that a felony had been committed, and it was the duty of the police to arrest the guilty parties, even without a warrant, and they are justified in arresting even an innocent party on probable cause. One of the leading cases in England is *Ledwith v. Catchpole*—Caldecott's cases, 291, reported at length in 1 Bennett & Heard's Leading Criminal Cases, 158, where it was held that where a felony has actually been committed, a constable, or even a private person, acting *bona fide*, and in pursuit of the offender, upon such information as amounts to a reasonable and probable ground of suspicion, may justify an arrest. Lord Mansfield said: "The first question is, whether a felony has been committed or not. And then the fundamental distinction is, that, if a felony has actually been committed, a private person may, as well as a peace officer, arrest; if not, the question always turns upon this: was the arrest *bona fide*? Was the act done fairly, and in pursuit of an offender, or by design, or malice, and ill-will? Upon a highway robbery being committed, an alarm spread and particulars circulated, and in the case of crimes still more serious, upon notice given to all the sea-ports, it would be a terrible thing, if, under probable cause, an arrest could not be made; and felons are usually taken up upon descriptions in advertisements. Many an innocent man has and may be taken up upon such suspicion; but the mischief and inconvenience to the public, in this point of view, are compara-