

COURT OF QUEEN'S BENCH.

QUEBEC, Dec. 6, 1884.

Before DORION, C. J., MONK, RAMSAY, CROSS
and BABY, JJ.

LA CORPORATION DE LA CITÉ DE QUÉBEC, Ap-
pellant, and PICHÉ, Respondent.

Illegal arrest—Damages—Probable cause.

Held, 1. That where a corporation is sued for illegal arrest by its officer, it is sufficient for the defendant to show that the officer had probable cause.

2. Where a person not licensed to sell was arrested while writing down orders for the house which he represented, that the police officer had probable cause for the arrest, under a by-law of the corporation forbidding to sell without license.

RAMSAY, J. This is an action of damages for illegal arrest. It is objected on the part of the corporation that neither by their servants nor by any act of theirs was the respondent arrested; that the sergeant who made the arrest was not their officer, but that he acted under the law, or what he conceived to be the law, and that he alone is responsible. The whole nature of the case contradicts this pretention. Piché was arrested under a by-law of the corporation, and he was held a prisoner not until he was punished for an infraction of the law, but until he was induced to satisfy the corporation by taking out a license. In fact the cost of a license was extracted from him under duress by the corporation, and he was then set at liberty by order of one of the council. It seems, too, that the mayor set the policeman on to the work—"il n'a pas ordonné l'arrestation, il a seulement attiré l'attention de la police sur un fait dont il avait été informé." It seems then to be not only an unreasonable pretext, but one highly imprudent for the corporation to urge.

The next point is as to the form of the judgment. It enters into no detail as to what constitutes the damages, except that the sum of \$150 to be paid to respondent was "as and for damages in the premises," "for the causes stated in the declaration." It is then simply a condemnation for the damages the respondent had suffered.

The only questions then that remain are as to the legality of the arrest. Respondent does not contest the validity of the by-law or the authority to make it; but he says, I was not within its terms. He says, I was not selling and the by-law forbids me "to sell," offering to sell is harmless. It is also contended that he had no authority to sell or even to offer to sell; that as a commercial traveller he could only be liable for selling by sample, and that in fact he did none of these things. It seems to me that it is unnecessary for the merits of the present suit to decide these fine distinctions. It is not necessary that respondent should have been guilty, but that his acts were of such a nature as to give the sergeant, acting honestly in the discharge of his duty, probable cause for the arrest. He was arrested as he was writing down orders in the book from Mr. Parent, on the house which Mr. Piché represented. It seems to me that this was probable cause under the statute and by-law, and that it left only a legal question to be decided, about which the constable knew nothing. He is therefore protected, and consequently his act cannot be a tort by the corporation.

Judgment reversed.

SUPERIOR COURT.

MONTREAL, Jan. 17, 1885.

Before PAPINEAU, J.

THE EXCHANGE BANK OF CANADA v. BURLAND.

Bank in liquidation—Action by liquidators for calls—Rights of depositors.

Held, that a depositor who is also a shareholder of a bank in liquidation under the Banking Act and which was insolvent when it suspended payment, is not entitled to offer the amount of his deposit in compensation of calls made upon his stock by the liquidators under the double liability clause of the Banking Act, Sect. 58 of 34 Vict. cap. 5.

The judgment explains the case:—

"Considérant que les liquidateurs nommés en vertu de la 45^e Vict., ch. 23, pour liquider les affaires de la Banque demanderesse poursuivent, au nom de celle-ci en vertu de l'autorité qui leur est conféré sous le même statut, le défendeur en sa qualité d'actionnaire