

HODGINS, J.A., IN CHAMBERS.

NOVEMBER 14TH, 1919.

GOLDBERG v. CRUIKSHANK.

Conspiracy—Action against Police Officers—Pleading—Statement of Claim—Public Authorities Protection Act, R.S.O. 1914 ch. 89, sec. 12—Search Warrant—Conviction for Breach of Ontario Temperance Act—Allegation of Damage—Trespass—Malicious Prosecution—Actionable Damage—Leave to Amend.

Appeal by the plaintiff from an order of GAULD, Local Judge at Hamilton, who decided that the action was not maintainable for anything done under the search warrant, but gave the plaintiff leave to amend. The defendants were police constables, and the action was for conspiracy.

M. J. O'Reilly, K.C., for the plaintiff.

F. F. Treleaven, for the defendants.

HODGINS, J.A., in a written judgment, said that the order of the Local Judge left the plaintiff in as good a position as she could expect, and the defendants were not asking that she should be deprived of such consolation as it might afford. There was no reason why the provisions of the Public Authorities Protection Act, R.S.O. 1914 ch. 89, could not be invoked before trial.

The plaintiff, by the statement of claim, alleged a conspiracy by the two defendants to injure the plaintiff financially and rob her of her good character.

The means adopted were to play upon her good nature and induce her to give liquor to the defendant Smith, posing as a sick man, and then to search her house, prosecute her, and secure a conviction for breach of the Ontario Temperance Act.

Damage is the gist of an action for conspiracy, and damage was alleged. It could only arise, however, under two heads—trespass due to the search and malicious prosecution. These matters were set out as overt acts, and were the only ones which could reasonably cause any actionable damage.

The plaintiff was therefore in this dilemma. Her action for conspiracy needed proof of damage to sustain it. That arising out of the search was barred by sec. 12 of the Public Authorities Protection Act, which prevents any action being brought against a police officer for anything done in obedience to a warrant issued by a Justice of the Peace until demand has been made for perusal and a copy of the warrant, and there has been refusal to exhibit it. The issue of the search warrant was sworn to and not denied.