

by Constable Smith by virtue of the warrant issued by the defendant. Whatever defence Constable Smith might have had if he had been sued I think it is not open to the magistrate. The magistrate himself had no authority to issue a warrant for such arrest without sworn information being first laid. He did issue the warrant and ordered the arrest without having any information laid. He issued the warrant without jurisdiction and the constable arrested them under that warrant. Therefore he is liable. The case was tried and the facts submitted to the jury; and they assessed the damages in each case at \$15. The learned Judge, after having the damages assessed, ordered a nonsuit to be entered reserving leave to enter a verdict in each case for the plaintiff for \$15. The rule therefore will be that the nonsuit be set aside and a verdict entered for the plaintiff in each case for \$15.

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CONNELY v. HAVELOCK SCHOOL TRUSTEES.

Supreme Court of New Brunswick, Barker, C.J., Landry, McLeod, White, Barry, and McKeown, JJ. June 21, 1912.

MECHANICS' LIENS (§ V-35)—*Public School Property.*—Appeal by defendants from the judgment of the County Court (County of King's) allowing the plaintiffs' lien for work and materials supplied as sub-contractors on the construction of a public school building; upon a claim made under the Mechanics' Lien Act, C.S.N.B. 1903, ch. 147.

G. W. Fowler, K.C., for plaintiffs.

W. H. Harrison, for defendants.

BARKER, C.J.:—The answer set up by the school trustees is that they, as well as their property, are exempt from the operation of the Lien Act, not by express words, but as a legal result of their holding and using the property as trustees for the benefit of the public, without profit to themselves, and as a part of a general public educational system for the province in effect carried on as a department of the Provincial Government. The Lien Act certainly does not bind the Crown. In order to do that the Crown must be specially mentioned. If the contention can be upheld at all it is on the theory that the school buildings and property from their use and nature are within the protection which the Crown, by its prerogative right throws around its own property or property held and used for its purposes. In England the question has undergone much discussion, more especially in reference to the liability of certain descriptions of property held and used for public purposes to be rated for poor rates. The conflicting decisions on the point seem to have been eventually settled by the House of Lords in *Jones v. Mersey*