

court. I do not see that the defendants can very well ask to profit by the circumstance that the warrant was illegally or irregularly executed. The defendant William Cochran, without inquiry as to the manner of executing the warrant, appeared and pressed the prosecution in the magistrate's court. In awarding damages I will eliminate all that occurred outside the jurisdiction. I will allow the plaintiff nothing in respect of this. It would not affect the quantum of damages much if I treated it the other way.

The defendants had no justification for their act. It was founded upon an improper motive. It was not a bonâ fide resort to criminal law. They set the criminal law in motion to drive out the plaintiff and obtain possession of the farm. They knew that the plums were gathered and taken by the plaintiff under claim of right. The plaintiff's acts were all consistent with honest belief that he had the right to do the act complained of. It does not yet appear that he did not act bonâ fide, though mistakenly.

I assess the damages at \$300. There will be judgment for the plaintiff for \$335, with costs according to the tariff of this Court.

INCH v. BROCK—LENNOX, J.—NOV. 9.

Costs—Scale of Costs—Action for Deceit Brought in Supreme Court—Damages Assessed by Jury at \$100—Discretion—County Court Costs—Set-off.—Action for damages for deceit. The jury found in favour of the plaintiff with \$100 damages. The disposition of the costs was reserved at the trial. The learned Judge now said that to give damages at all the jury had to discard the evidence of the defendant and of the witness Demsey; and, having done this, it was not easy to see why they did not allow the plaintiff a much larger sum than they did. But a jury of farmers were peculiarly well qualified to estimate the amount the plaintiff was entitled to. If, by allowing costs upon the Supreme Court scale, a larger compensation would be secured to the plaintiff, it might be proper to do so. But the mistake of forum, if instructions for the action are honestly given, is the mistake of the solicitor in most cases, and not the mistake of the client; and, generally speaking, the solicitor ought to be contented with the costs of the Court in which the action should have been brought. After giving the question a great deal of thought, the learned Judge was of opinion that the plaintiff