

*Held*, 1. The trial judge erred in excluding this evidence from the consideration of the jury.

2. He erred in failing to instruct the jury not to give vindictive damages unless they were of the opinion that defendant was influenced by ill-will or malice, or had acted in bad faith, or was guilty of some oppression or misconduct towards plaintiff in connection with the arrest.

3. If defendant thought he was acting as an officer at the time he made the arrest and had reasonable grounds for entertaining that view, and was entitled to protection to the same extent as if he were an officer.

4. Evidence of the assault committed by plaintiff, which was a necessary element of defendant's case was improperly excluded.

Motion for new trial allowed with costs.

*W. E. Roscoe*, Q.C., for appellant. *R. L. Borden*, Q.C., for respondent.

Full Court.]

STRONG v. BENT.

[March 8.

*Statute of frauds*.—*Verbal contract of hiring not to be performed within year*.—

*Substituted contract not covered by statement of claim*.—*Parol evidence to supplement letter*.—*New trial*.

In Sept., 1896, plaintiff and defendant entered into a verbal agreement for the hiring of plaintiff by defendant for a year, the period of hiring to commence at a future date not then determined. Plaintiff commenced working for defendant on the 2nd or 3rd Nov. following, and was dismissed in the month of May, 1897, on the ground that he had done business in other goods and for other firms, contrary to his agreement with defendant. On the trial evidence was given to show that after the hiring in November a reorganization of the defendant firm took place, and that a new agreement was made under which plaintiff performed services for defendant, for which he was entitled to recover.

*Held*, reversing the judgment of the County Court judge with costs, that plaintiff could not recover either on the original contract, for non-compliance with the statute of frauds, it not being a contract to be performed within a year, or upon the substituted contract of which evidence was given, as he had not declared upon such a contract in his statement of claim or given defendant notice that he intended to set up such a claim. And that a letter from defendant, which was relied upon as taking the case out of the statute, could not be supplemented by parol evidence.

Per MEAGHER, J. —The statement of claim was sufficient to cover a claim for a yearly hiring under the alleged substituted agreement, and that the case should be sent back for a new trial, on this point, to determine whether in point of fact such agreement had been made.

*H. W. C. Book* for appellant. *H. Mellish* for respondent.

Full Court.] BANQUE D'INCHELAGA v. MARITIME RY. NEWS CO. [March 8.

*Partner*.—*Costs of appeal taken by co-partners*.—O. 40, R. 10.—*Execution*.

The defendants, B., D. and C., did business as co-partners under the name and style of the Maritime Railway News Co. In an action at the suit of