

The defendants' solicitor accompanied the defendant Anderson to the justice of the peace when the warrant was obtained, and the evidence also shewed that Mr. Corley, the Crown Attorney, approved of the warrant being issued upon the statements made by Anderson and his solicitor.

FALCONBRIDGE, C.J., at the close of all the evidence, gave effect to the defendants' motion for a nonsuit, being of opinion that the plaintiffs had failed to establish want of reasonable and probable cause with reference both to the search warrant and to the proceedings before the magistrate and at the Sessions; as to all the proceedings other than the search warrant, he was of opinion that the defendants were not responsible because they were instituted solely by the Crown authorities, and not by the defendants.

The appeal was heard by MEREDITH, C.J., MACMAHON and TEETZEL, JJ.

I. F. Hellmuth, K.C., and Sinclair, for the plaintiffs.

H. H. Dewart, K.C., for the defendants.

TEETZEL, J., delivering the judgment of the Court, said that as to the actions for malicious prosecution he agreed that the defendants were not responsible, because the first prosecution complained of was clearly the result of a direction by the police magistrate, which was given without any request or suggestion by either of the defendants. And it was equally clear that they were in no way responsible for converting the original charge into a charge for conspiracy. Otherwise than by giving their evidence as Crown witnesses, it could not be said that the defendants in any way aided or encouraged the prosecution of the plaintiffs; nothing was said by either of the defendants inconsistent with the innocence of the plaintiffs; and the absence of such evidence distinguished this case from *Fitzjohn v. MacKinder*, 9 C. B. N. S. 505.

As to the claim for damages by reason of the search warrant, the evidence of the plaintiffs and defendants was in conflict upon a number of points of importance, and, if the evidence of the plaintiffs and Owens was accepted, there were several important facts which the defendants did not submit either to their solicitor or to Mr. Corley. For instance, Owens swore that he was acting in all respects within the scope of his authority in agreeing upon the prices with Willinsky; also that the defendant MacBeth introduced Willinsky to him on the 19th September, which was corroborated by Willinsky, but denied by MacBeth. Owens also gave evidence that the entries in the books were in accordance with the practice in the