

The appellant's case fails for the same reason that that of the plaintiff in *Nichols v. Marsland* failed.

In addition to these reasons, the appellant's case also fails for the reason which led to the failure of the plaintiff in *Thomas v. Birmingham Canal Co.* (1879), 49 L.J.Q.B. 851. The facts of that case were not unlike those of the case at bar.

[Quotation from the judgment of the Court delivered by Lush, J.]

Appeal dismissed with costs.

NOVEMBER 3RD, 1913.

WATERS v. CITY OF TORONTO.

Malicious Prosecution—Responsibility of Municipal Corporation for Prosecution of Offender against By-law—Evidence.

Appeal by the plaintiff from the judgment of DENTON, Jun. Co.C.J., dismissing an action brought in the County Court of the County of York to recover damages for malicious prosecution, and tried without a jury.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

H. H. Dewart, K.C., and N. S. Macdonnell, for the plaintiff.

C. M. Colquhoun, for the Corporation of the City of Toronto, the defendants.

The judgment of the Court was delivered by MEREDITH, C. J.O.:—The action is for malicious prosecution, and the allegations of the statement of claim are: that the respondent corporation on the 30th October, 1912, falsely and maliciously and without any reasonable or probable cause, caused the appellant to be arrested and imprisoned (par. 2); and that on the following day the respondent corporation, falsely and maliciously and without any reasonable or probable cause, caused a police constable named David MacKenney to appear as informant before a Justice of the Peace, and to charge that the appellant had been disorderly on the previous day, contrary to a by-law of the respondent corporation (par. 3).