

GAUL v. TOWNSHIP OF ELICE.

Boyd, C., Ferguson, J., Robertson, J.]

[Feb. 13.

Conviction—Information by constable—Invalid warrant—Indemnity resolution by municipal corporation—Arrest—Payment of fine—Protection to constable—Knowledge of corporation—Ultra vires resolution—Liability of members of corporation.

The plaintiffs on the information of the defendant M. a constable, and one H. were summoned before a magistrate charged with interfering with and spoiling a spring of water at the side of a highway but did not attend, and in their absence were convicted and fined, the conviction imposing one fine on all three. A question was raised as to the regularity of the proceedings because there was no seal on the summons, and the magistrate hesitated about issuing a warrant until the Township Council passed a resolution indemnifying him against costs. The warrant directed "To all or any constables," etc., was issued, following the form of the conviction and handed to one Maurer, another constable, who got M. to assist him and arrested the plaintiffs, conveyed them to gaol and kept them there (over night) until the fine and costs were paid. In an action against the Township Council and defendant M. for maliciously enforcing an invalid conviction.

Held, that the defendant M. was a constable and acted as such in the execution of the warrant and was entitled to all the protection extended by the law to public officers of the peace; that the warrant being bad on its face he was, by virtue of section 21 of the Code, exempt from all criminal responsibility; that he was protected from a civil action by virtue of R.S.O. 1897, ch. 88 sections 1, (2), 13 and 14 and the action should have been brought within six months and notice of action given under sections 975, 976 and 980 of the Code. *Ex p. McCleave* (1900) 35 N.B.R. 100 distinguished.

Held, also that there was no proof of knowledge on the part of the council that either the conviction or warrant was illegal or that they were acting other than bona fide for the protection of the spring on the highway and no evidence of malice; that even if there was knowledge, the resolution was ultra vires and they were not bound to make good any costs or any damages in any action by the magistrate, in consequence of the resolution; that the legal consequences of any illegal conduct arising from the act of the council are not to be visited on the municipality but upon the members who passed the resolution.

McSorley v. Mayor etc. of St. John (1881) 6 S.C.R. 531, distinguished. Judgment of the County Court of Perth affirmed.

Mabee, K.C., for the appeal. *G. G. McPherson*, K.C., contra.