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No. 12

MARCH 17TH, 1905.

C. A.

O'DONNELL v. CANADA FOUNDRY CO.

*Appeal—Court of Appeal—Leave—Order of Divisional Court
—Malicious Arrest.*

Motion by plaintiff for leave to appeal from order of a Divisional Court (5 O. W. R. 215), affirming judgment of ANGLIN, J. (4 O. W. R. 402), dismissing action for malicious arrest.

J. G. O'Donoghue, for plaintiff.

G. H. Watson, K.C., for defendants.

The judgment of the Court (MOSS, C.J.O., OSLER, MACLENNAN, GARROW, MACLAREN, J.J.A.), was delivered by

Moss, C.J.O.—We are of opinion that leave to appeal ought not to be granted.

The only plausible ground presented in support of the application was that there was evidence in the case on which a jury might properly find that in making the arrest defendant Wilson was acting under instructions from his co-defendants. But a perusal of the evidence satisfies us that this is not the case. There is no evidence which could have justified the jury in finding that it was within the scope of Wilson's duty, under any instructions he had from his co-defendants, to make the arrest.

We see no reason for permitting the case to be carried further.

The application is refused with costs.