

Another constable says: "On Kee appeared to be in charge on both occasions."

On this evidence the magistrate could convict the accused.

Motion dismissed with costs.

MIDDLETON, J., IN CHAMBERS.

NOVEMBER 9TH, 1916.

*SIMPSON v. LOCAL BOARD OF HEALTH OF
BELLEVILLE.

Security for Costs—Action against Local Board of Health and Medical Officer of Health—Death of Diphtheria Patient—Negligence—Fatal Accidents Act—Public Authorities Protection Act, sec. 16 (1)—Interpretation Act, sec. 29 (x)—“Person”—Assumption of Defence by Municipal Corporation—Incurring of Costs by Defendants—Insolvency of Plaintiffs—Proof of.

An appeal by the plaintiffs from an order of the Local Judge at Belleville requiring them to give security for the defendants' costs of the action.

W. C. Mikel, K.C., for the plaintiffs.

A. A. Macdonald, for the defendants.

MIDDLETON, J., in a written judgment, said that the action was brought under the Fatal Accidents Act, R.S.O. 1914 ch. 151, against the Local Board of Health and the Medical Officer of Health, to recover damages for the death of the plaintiffs' infant daughter, who, having diphtheria, was isolated by the defendants, and whose death was caused, as the plaintiffs alleged, by the defendants' negligence and failure to supply her with proper medical attendance, medicine, and assistance.

"Where an action is brought against a Justice of the Peace or against any person for any act done in pursuance or execution or intended execution of any statute, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such statute, duty or authority, the defendant may at any time after the service of the writ apply for security for costs:" sec. 16 (1) of the Public Authorities Protection Act, R.S.O. 1914