LOUISE LAMB (*Plaintiff*) ..... APPELLANT;

AND

PAUL BENOIT, CHARLES FORGET AND CHARLES NADEAU (*Defendants*) ..... RESPONDENTS.

1958
*Jun. 11, 12
1959
Jan. 27

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Damages—Action against police officers for false imprisonment and malicious prosecution—Jehovah's Witnesses—Distribution of literature—Defence of prescription—The Magistrate's Privilege Act, R.S.Q. 1941, c. 18, ss. 5, 7—The Provincial Police Act, R.S.Q. 1941, c. 47, ss. 24, 36—Civil Code, art. 1053.

The plaintiff, a Witness of Jehovah, was arrested in 1946, while she was distributing pamphlets at a street-corner in Verdun, Quebec. Three other members of her sect, who were at the other three corners of the intersection, were arrested at the same time while distributing

*PRESENT: Kerwin C.J. and Taschereau, Rand, Locke, Cartwright, Fauteux, Abbott, Martland and Judson JJ.

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a pamphlet called "Quebec's Burning Hate" which was considered seditious at the time. There was no evidence that the plaintiff was distributing that particular pamphlet. She was detained in gaol over the week-end and was later offered her freedom in exchange for a release of all liability for her detention. When she refused to sign the release, she was charged with publishing and as being a party to a conspiracy to publish the pamphlet "Quebec's Burning Hate". She was freed at her preliminary hearing, and later brought an action for damages against the police officers who had arrested and charged her. The main defence pleaded by the three defendants was that the action, having been instituted more than six months after the arrest, was prescribed. The trial judge dismissed the action. This judgment was affirmed by the Court of Appeal.

Held (Taschereau, Fauteux and Abbott JJ. dissenting in part): The action against the defendant Benoit should be maintained and the damages assessed at $2,500.

Held further, per curiam: The action against the defendants Nadeau and Forget should be dismissed.

Per Kerwin C.J. and Rand, Cartwright and Judson JJ.: The arrest and prosecution, as the Court of Appeal found, were quite without justification or excuse. The real defence was that the action was not started within six months, as required by the *Provincial Police Act* and the *Magistrate's Privilege Act*. Both statutes apply to police officers, but while the latter requires good faith on the part of the officer, the former does not mention that condition. The limitation of the six months' prescription to acts done "in good faith" in s. 7 of the *Magistrate's Privilege Act* was nevertheless a condition of the limitation under s. 24 of the *Provincial Police Act*. The meaning in s. 24 of "an act done . . . in his official capacity" was no different from the meaning of "anything done by him in the performance of his public duty" in s. 5 of the *Magistrate's Privilege Act* or "of his duty" in s. 7 of the same Act. An honest mind, intent on enforcing the law, and belief in facts justifying arrest, are essential elements in the performance by an officer of his public duty or of any act done "in his official capacity". The words "in good faith" in s. 7 are, in relation to s. 5, words of amplification not limitation, explicative not qualifying. That state of mind is as applicable to police officers under s. 24 as under s. 7.

In the case of the defendant Benoit, there was lacking that state of mind necessary to the benefit of the limitation under either s. 7 or s. 24, and his defence must be rejected.

In the case of the defendant Nadeau, he took no part in instituting the proceedings and it has not been shown that he was a party to the arrest.

In the case of the defendant Forget, it was clear that he took no part in the arrest or the imprisonment. As to the claim for malicious prosecution, assuming that the law in Quebec was that an action could be maintained against a defendant who had acted without malice provided he had acted without reasonable and probable cause, this Court, in the particular circumstances of this case, should not interfere with the view of the judges of the Courts below that Forget did not act without reasonable and probable cause.

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Per Locke and Martland JJ.: The action against Nadeau should be dismissed. He was not a party to the detention or in the laying of the charge. As to the unlawful arrest, the proper inference to be drawn from the evidence was that he believed in the existence of facts which would justify the arrest, and there was nothing to support the charge that he acted maliciously or in bad faith. The claim was, therefore, prescribed by s. 24 of the *Provincial Police Act*. *Beatty v. Kozak,* [1958] S.C.R. 177, 195.

As to the defendant Forget, he did not have a *bona fide* belief in the facts which could have justified his conduct as was required in order to invoke the *Provincial Police Act*. However, he was not a party to the arrest and the evidence did not show clearly that the false imprisonment resulted from the laying of the information. As to the claim for malicious prosecution, although neither of the statutes relied upon applied when malice was established, this Court was not justified upon the evidence in reversing the finding of the trial judge that Forget had not acted maliciously.

As to the defendant Benoit, his conduct was from the outset unlawful, and neither of the statutes relied upon applied to the claim for false arrest, false imprisonment, or malicious prosecution. The statutes were each to be construed in the same manner as the *Public Authorities Protection Act,* 1893, 56-57 Vict. (Imp.), c. 61, which required good faith. The Quebec statutes were based upon the earlier English statutes to the same effect as the *Public Authorities Protection Act,* 1893, which merely declared the law as stated in the numerous decisions upon the earlier statutes, and they were subject to the same rules of construction.

As to the claim for malicious prosecution against Benoit, neither statute had any application. *Newell v. Starkie* (1920), 89 L.J.P.C. 1; 26 Halsbury, 2nd ed., p. 497. It was impossible to sustain a contention that there was any reasonable or probable cause for the arrest, imprisonment or prosecution, and as to malice, the evidence disclosed that he was actuated by indirect and improper motives.

The cases decided in England interpreting the *Public Authorities Protection Act,* 1893, and the earlier Acts to the same effect, were to be considered in deciding the interpretation which was to be given to s. 24 of the *Provincial Police Act*. Section 41 of the *Interpretation Act* of Quebec and s. 15 of the *Interpretation Act* of Canada were simply restatements in statutory form of what was said in the judgment of the Barons in *Heydon's* case (1584), 3 Co. Rep. 7(b), which has been applied in England for more than 300 years.

Per Taschereau, *dissenting in part*: The claim against Nadeau and Forget should be dismissed. They committed no fault which could have engaged their liability under art. 1053 of the *Civil Code*.

As to the defendant Benoit, whether he committed a delict by acting intentionally or a quasi-delict by his negligence or imprudence in the exercise of his official capacity, the service of the action was made late and the action must therefore be dismissed.

The whole case turns upon the civil law of Quebec as found in art. 1053 of the *Civil Code* and upon s. 24 of the *Provincial Police Act* which is a special Act of provincial origin enacted after the coming into force of the *Civil Code,* the supreme authority in the matter. That statute governs the police force and prevails over the *Magistrate's*

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Privilege Act, and presupposes a fault under art. 1053 of the *Civil Code*. The action under art. 1053 is normally prescribed by two years; but the Legislature has enacted that if a police officer has acted in his official capacity that prescription was to be reduced to six months. The only condition precedent was that the officer had acted in his official capacity; good faith on his part was not required. Whether Benoit committed a fault in acting recklessly without reasonable and probable cause, he nevertheless acted in his official capacity. Forfeitures, such as found in the statute here, are imperative and cannot be suspended or interrupted. Consequently even if the action had been served on the other defendants within the time limit, it could not serve as an interruption as regards the defendant Benoit. Furthermore, the prescription could not be interrupted in that way because the action was dismissed as against the other defendants.

Per Fauteux J., *dissenting in part*: The action against the defendants Nadeau and Forget should be dismissed. This Court should not modify the unanimous judgment of the Court of Appeal that none of the acts invoked against them by the plaintiff constituted a fault engaging liability.

The action against the defendant Benoit should also be dismissed because service of it was not effected within the six months prescribed by s. 24 of the *Provincial Police Act*. This was an action claiming damages, in a delictual matter, against an officer of the provincial police. Obviously, the dispositions of the *Civil Code* applied. Under art. 1053 of the *Civil Code,* it is sufficient to give the right of action that the act causing damage be illicit; malice is not required. The laying of an information under conditions authorized by the penal law cannot constitute an illicit act. All that is required under the penal law is the belief in the guilt based on reasonable and probable causes. In this view there is no conflict between the civil law of Quebec as to the action in damages for malicious prosecution and the Canadian public law conditioning the right to lay an information. The incidence of malice not being required under the public law, the public law cannot be invoked as modifying the private law, or to contend that Parliament has considered essential for the prosecution of the crime that the absence of malice be *per se* an absolute defence in a civil action for malicious prosecution.

Section 24 of the *Provincial Police Act,* the origin of which was provincial, reduced to six months the prescription of two years generally applicable in the case of actions for damages resulting from delicts or quasi-delicts. This reduction is not based on reasons characterizing the simple prescription but, being part of the very character of the law enacting it, on the intention of the legislature to establish, for reasons related to the administration of the police force, a stipulated delay. Good faith on the part of the officer is of no moment. The prescription is an absolute bar to the action, if the officer acted in his "official capacity". There was no doubt that all the acts done by Benoit were done in his "official capacity".

Per Abbott J., *dissenting in part*: The action against the defendants Nadeau and Forget should be dismissed since, as found by the Court below, they committed no fault.

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The action against the defendant Benoit should also be dismissed. In placing the plaintiff under arrest and in causing the complaint to be lodged, Benoit was acting "in his official capacity" although such actions were to his knowledge completely unjustified. The right of action in damages such as that asserted here is a civil right and must be founded upon the law in force in Quebec—in this case art. 1053 of the *Civil Code*. The extinguishment of any such right of action by prescription is similarly governed by the law of Quebec and unless s. 24 of the *Provincial Police Act* is applicable that right of action would be prescribed by two years. Benoit was not entitled to avail himself of the special protections and limitation of action provided by the *Magistrate's Privilege Act,* since he was not acting in good faith. However, the language of s. 24 of the *Provincial Police Act,* the provisions of which are said to prevail over those of every other general or special Act, is clear and has the effect of substituting a prescriptive period of six months for the normal period of two years. The prescriptive period of two years applies whether or not the defendant has acted in good faith and with reasonable and probable cause. There are no grounds to limit the period of six months, provided for in s. 24, to those cases in which a police officer has acted in good faith and with reasonable and probable cause.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec[1], affirming a judgment of Montpetit J. Appeal allowed, Taschereau, Fauteux and Abbott JJ. dissenting in part.

W. Glen How, for the plaintiff, appellant.

Honourable Gustave Monette, Q.C., for the defendants, respondents.

The judgment of Kerwin C.J. and Cartwright J. was delivered by

CARTWRIGHT J.:—The relevant facts are set out in the reasons of other members of the Court and I will refer to them only so far as is necessary to make clear the reasons for the conclusion at which I have arrived.

The appellant asserts two causes of action, false imprisonment and malicious prosecution.

As to Nadeau, I agree that the appeal fails. He took no part in instituting the proceedings against the appellant and consequently is not concerned in the claim for malicious prosecution. In regard to the claim for false imprisonment, for the reasons I am about to state, I have, although not

[1] [1958] Que. Q.B. 237.

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without some hesitation, reached the conclusion, in agreement with my brother Rand, that Nadeau was not a party to the arrest of the appellant.

The learned trial judge makes no express finding as to what was said by Nadeau to the appellant. It is not suggested that he used any force or threat of force or that he touched the appellant; and up to the point when the appellant arrived at the door of the automobile in which Benoit was seated the findings made by Pratte J. in the following passage appear to me to be in accordance with the evidence[1]:

> Le samedi, 7 décembre 1946, Benoit se rend à Verdun avec quatre gendarmes, sur l'ordre de son supérieur, le capitaine Labbé, pour y surveiller les activités de certains Témoins de Jehovah au sujet de qui des plaintes avaient été reçues à la Sûreté. Ayant aperçu, à l'intersection des rues Church et Wellington, quatre jeunes filles (une à chaque coin du carrefour) qui offraient des tracts aux passants, il donne ordre à Nadeau de les lui amener. Celui-ci s'approche des jeunes filles et les prie discrètement de le suivre, disant que quelqu'un désire leur parler. Elles acquiescent de bonne grâce, et dès qu'elles sont rendues à la voiture de Benoit, qui est stationnée tout près du carrefour, Nadeau s'en retourne au quartier-général.

However, the appellant testified that when she arrived at the automobile Nadeau not merely requested but ordered her to get into it. I will proceed on the assumption that if this evidence be accepted it would warrant a finding that Nadeau arrested the appellant. Miss Best, who was present and was called as a witness by the appellant was not questioned on this point. Nadeau denied having asked the appellant to get into the automobile. Benoit testified that it was he (Benoit) who asked the appellant and the other young women to get in. Every witness other than the appellant who was questioned on the point said that Benoit and Pelland were the only two police officers who were in the automobile in which the appellant was driven to police headquarters and that Nadeau went back in the other automobile. The appellant testified that the officer who told her to get into the automobile was one of those who rode in the front seat of the automobile in which she was taken to headquarters. On this state of the record, and remembering that the onus of proving that Nadeau took part in her arrest lay upon the appellant, I do not think it would be

[1] [1958] Que. Q.B. at 238.

safe to make a positive finding that it was Nadeau who ordered the appellant to get into the automobile; it seems to me more probable that it was Benoit. This distinguishes the case from *Beatty v. Kozak*[1], relied upon by the appellant, in which it was held that three officers, of whom Beatty was one, acted together in arresting the plaintiff and held her in their joint custody.

The view which I think should be taken as to the facts makes it unnecessary for me to consider the other grounds of defence put forward on behalf of Nadeau on the assumption that he did order the appellant to get into the automobile.

As to Forget also, I agree that the appeal fails.

It is clear that he took no part in the arrest or imprisonment of the appellant, but there remains the question whether he is liable on the claim for malicious prosecution. I was at first of the opinion that he had a good defence to that claim on the ground that in laying the information against the appellant he acted without malice. However, as is pointed out in the reasons of my brother Taschereau, the later decisions of the Court of Queen's Bench appear to hold that the law of the Province of Quebec differs from the English law as to the conditions that must be fulfilled in order that an action shall lie for malicious prosecution.

Under English law the four conditions are as follows:

(*i*) The criminal proceedings must have been instituted by the defendant;

(*ii*) He must have acted without reasonable and probable cause;

(*iii*) He must have acted maliciously;

(*iv*) The proceedings must have terminated in favour of the plaintiff.

The case of *Fabyan v. Tremblay*[2] and the other cases cited on this point by my brother Taschereau appear to hold that in Quebec the third condition need not be fulfilled and an action may be maintained against a defendant who has acted without malice provided he has acted without reasonable and probable cause.

[1] [1958] S.C.R. 177, 120 C.C.C. 1, 13 D.L.R. (2d) 1.
[2] (1917), 26 Que. K.B. 416.

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The decisions mentioned are contrary to a number of earlier decisions in the Quebec Courts the result of which is accurately summarized in the following passage in Walton—The Scope and Interpretation of the Civil Code of Lower Canada, 1907, at p. 42:

> Questions which concern the relation of the subject to the administration of justice belong to the public law, and are, therefore, governed by the law of England, and not by that of France.
>
> * * *
>
> And it is the English law which decides under what conditions damages are due for false arrest or malicious prosecution.
>
> The plaintiff (i.e. in an action for malicious prosecution) must show that the defendant acted maliciously and without probable cause.

In the case at bar, I do not propose to choose between the two conflicting views set out above as I wish to reserve my opinion on the question until a case arises in which it is necessary to decide it. Its importance is obvious, and the answer to it may well depend on whether the law governing an action for malicious prosecution is considered as a part of the criminal law defining the privilege, or the conditions of immunity, of a citizen who sets that law in motion, in which case it would seem that the law upon the subject should be uniform throughout Canada, or whether it is regarded simply as a branch of the law of torts.

Assuming for the purposes of this branch of the matter that the law to be applied is that laid down in *Fabyan v. Tremblay, supra,* I have with some hesitation, reached the conclusion that, in the peculiar circumstances of this case, we ought not to interfere with the view of the judges in the Courts below that Forget did not act without reasonable and probable cause, when he relied on the statement made to him by Benoit that, after he had consulted with the Crown prosecutor, the latter had directed the laying of the information. The learned trial judge has indicated in his reasons a doubt as to the desirability of the practice said to exist by which a "liaison officer" swears to an information on the advice or instructions of the officer who has investigated the case. I share that doubt. However in the case at bar, where the charges laid were those of publishing a seditious libel and of conspiracy, the officer would of necessity have to be guided by the opinion of the Crown prosecutor.

This conclusion that Forget is free from liability does not leave the appellant without a remedy, for the criminal proceedings against her were instituted by Benoit through the agency of Forget; and, for reasons fully stated by other members of the Court, it is clear that Benoit acted maliciously and without reasonable and probable cause in directing that the information be laid.

As to Benoit, I agree with the reasons and conclusions of my brother Rand and have nothing to add.

I would dispose of the appeal as proposed by my brother Rand.

TASCHEREAU J. (dissenting in part): L'appelante a institué une action en dommages contre les trois intimés et leur a réclamé, conjointement et solidairement, la somme de $5,000. Elle allègue qu'elle fait partie de la secte religieuse connue sous le nom de "Témoins de Jéhovah", et qu'alors qu'elle se tenait au coin des rues Church et Wellington à Verdun, le 7 décembre 1946, elle fut illégalement arrêtée, et conduite au bureau de la Sûreté provinciale à Montréal, où elle fut détenue jusqu'au 9 décembre suivant. A cette même date, une plainte fut logée contre elle pour avoir distribué un libelle séditieux intitulé "Quebec's Burning Hate for God and Christ and Freedom", et pour avoir conspiré avec d'autres pour publier et diffuser dans le public le même libelle séditieux. Le 10 janvier 1947, elle subit une enquête préliminaire, et fut libérée sur le champ par M. le Juge Omer Legrand de la Cour des Sessions de la Paix. Elle a subséquemment poursuivi quatre membres de la Sûreté provinciale qui auraient participé à son arrestation, et à une dénonciation devant les tribunaux correctionnels.

Les défendeurs sont l'officier Charles Nadeau qui a requis l'appelante de venir à la voiture de la Force constabulaire, stationnée non loin; Pierre Pelland qui conduisait la voiture; Paul Benoit qui se trouvait aussi dans la voiture, qui a fouillé sa bourse, qui a ordonné sa détention dans une cellule de la Sûreté; et enfin, Charles Forget qui a signé et assermenté la plainte.

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L'honorable Juge Montpetit de la Cour supérieure a débouté la demanderesse de son action pour le motif qu'elle n'avait pas été instituée dans les délais légaux prévus par la loi. L'appelante a inscrit un appel devant la Cour du banc de la reine[1] contre trois défendeurs seulement, omettant d'inclure dans son avis d'appel, Pierre Pelland le conducteur de la voiture. La Cour du banc de la reine a unanimement confirmé le jugement, et c'est de ce dernier qu'il y a appel devant cette Cour.

Il ne fait aucun doute que l'appelante a été l'objet de traitements fort repréhensibles. Après son arrestation, sur l'ordre de Benoit, elle fut écrouée dans une cellule de la Sûreté et y a vécu dans des conditions qu'il me répugne de décrire. Je n'hésite pas à croire qu'elle a dû être profondément humiliée par le traitement dont elle a été la victime. En outre, au cours de cette détention, on lui a offert le compromis de ne pas loger de plainte contre elle et de la libérer, si elle consentait à signer une renonciation à toute réclamation en dommages qu'elle pourrait avoir contre les agents de la Sûreté provinciale. Évidemment, elle a refusé avec raison cette proposition qui révélait de la part des agents la réalisation d'une erreur commise. L'un des intimés, Benoit, dit dans son témoignage que c'est *la routine habituelle* d'obtenir de semblables renonciations de la part des suspects que l'on relâche sans procès.

Comme défense à l'action instituée contre eux, les intimés ont plaidé que les défendeurs ont agi de bonne foi, et n'ont fait que leur devoir en arrêtant la demanderesse, et en portant contre elle une accusation de conspiration pour distribuer un libelle séditieux, et qu'en conséquence ils n'ont encouru aucune responsabilité civile à l'occasion des actes posés par eux dans l'exercice de leurs fonctions. Ils allèguent en outre que les avis donnés aux défendeurs par la demanderesse étaient insuffisants, et ne répondaient pas aux exigences de la loi. Enfin, ils plaident que l'action de la demanderesse a été intentée tardivement, et qu'au moment de son institution elle était prescrite en vertu de la *Loi concernant les privilèges des juges de paix, des magistrats et autres officiers remplissant des devoirs publics,* S.R.Q. 1941, c. 18, et de la *Loi de la Sûreté provinciale et de la police des liqueurs,* S.R.Q. 1941, c. 47.

[1] [1958] Que. Q.B. 237.

Je désire en premier lieu disposer des cas de deux des officiers, intimés dans la présente cause, soit Charles Nadeau et Charles Forget. Le premier, agissant sous les ordres de son supérieur Benoit, est allé, en faisant usage de toute la discrétion possible, demander à l'appelante de le suivre à la voiture où se trouvait Benoit, et l'a priée de monter dans la voiture. C'est son unique participation à cet incident. Comme M. le Juge Pratte de la Cour du banc de la reine, je suis clairement d'opinion qu'il n'a commis aucune faute, et qu'il ne peut être tenu responsable des dommages que l'appelante a pu subir.

Quant à Forget qui a assermenté la plainte, je crois qu'il a agi avec cause raisonnable et probable, en se basant sur des informations reçues d'autres personnes, en qui il avait justement raison de mettre sa confiance. On ne peut exiger de cet *officier de liaison* entre la force constabulaire et les tribunaux, de faire une enquête personnelle chaque fois qu'il doit assermenter une plainte, pour se rendre compte de la véracité des faits qu'on lui rapporte. Cet officier sera à l'abri de toute responsabilité, s'il ne commet aucune imprudence ou négligence dans l'exercice de ses fonctions. Il ne devra aucune réparation civile s'il n'agit pas témérairement. C'est la règle énoncée à l'art. 1053 C.C. qui régit les réclamations de ce genre, et qui doit nécessairement nous guider. Comme le disait Sir Horace Archambeault en prononçant le jugement unanime de la Cour du banc du roi dans *Fabyan v. Tremblay*[1]:

> Autrefois on décidait que c'était le droit anglais qui gouvernait en matière de recours en dommages pour fausse arrestation. Ces décisions étaient basées sur la doctrine que vu que le droit criminel anglais est notre droit, il ne pourrait pas être mis à exécution si les plaignants de bonne foi pouvaient être tenus responsables en dommages pour fausse arrestation.
>
> Cette doctrine n'est plus admise. Notre jurisprudence est aujourd'hui solidement établie en sens contraire; et tout le monde admet maintenant que ce sont les principes du droit civil qui nous régissent en cette matière. On applique à ce cas, comme à tous les autres recours en dommages, la règle de l'article 1053 C.C., qui rend toute personne responsable du dommage qu'elle cause à autrui par sa faute, que cette faute consiste dans son fait, son imprudence, sa négligence ou son inhabilité.

Vide également *Côté v. Côté*[2] *et Prime v. Keiller et al*[3].

[1] (1917), 26 Que. K.B. 416 at 420. [2] (1926), 32 R.L. (N.S.) 344.
[3] [1943] R.L. (N.S.) 65.

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Dans le cas qui nous occupe, Forget a pris ses informations de Benoit qui avait consulté l'avocat de la Couronne, et il a logé la plainte dans un temps où l'on considérait les actes reprochés aux "Témoins de Jéhovah" comme séditieux. C'était avant la décision de cette Cour dans *Boucher v. Le Roi*[1].

Ce qui a été décidé dans *Gaston v. Jasmin*[2] s'applique au cas de Forget:

> It is a defence to an action in damages for malicious prosecution that the complainant acted with reasonable and probable cause and that before laying the charge he entrusted the matter to the Chief of Provincial Detectives and took the advice of one of the Crown Prosecutors.

Vide également dans le même sens: *Lalonde v. Ville de Lachine*[3], *Dupuis v. City of Montreal et al*[4] *et Gauthier v. Brodeur*[5].

Je suis clairement d'opinion que Forget ne peut être recherché en dommages comme conséquence de l'acte qu'on lui reproche.

Le cas de Benoit qui a opéré l'arrestation et ordonné l'incarcération de l'appelante dans une cellule de la Sûreté, peut se présenter sous un aspect différent. Je me dispenserai cependant d'analyser la preuve qui concerne cet intimé, et de tirer les conclusions légales qui pourraient découler de ce qu'elle a révélé, vu que je crois que l'action lui a été signifiée tardivement.

En vertu du c. 18 des Statuts Refondus de Québec 1941, qui est la *Loi concernant les privilèges des juges de paix et al,* une certaine protection contre les réclamations en dommages est accordée à ces officiers, et l'art. 7 stipule qu'ils peuvent bénéficier des dispositions du statut, s'ils ont agi de bonne foi. L'une de ces dispositions qui se trouve à l'art. 5, et dont peut conséquemment bénéficier un défendeur de bonne foi, veut que l'action soit instituée *dans les six mois* qui suivent la *commission de l'infraction.* Ces deux articles se lisent ainsi:

> 7. Les juges de paix, officiers ou autres personnes ont droit à la protection et aux privilèges accordés par la présente loi dans tous les cas *où ils ont agi de bonne foi* dans l'exécution de leurs devoirs, bien qu'en faisant un acte, ils aient excédé leurs pouvoirs ou leur juridiction, et aient agi clairement contre la loi.

[1] [1951] S.C.R. 265, 11 C.R. 85, 99 C.C.C.1, 2 D.L.R. 369.
[2] (1928), 45 Que. K.B. 329.
[3] (1912), 18 Que. R.J. 360.
[4] (1913), 44 Que. S.C. 169.
[5] (1926), 64 Que. S.C. 42.

5. Aucune telle action ou poursuite ne peut être intentée contre un juge de paix, un officier ou toute autre personne agissant comme susdit, pour un acte qu'ils ont fait dans l'exécution de leurs devoirs publics, à moins qu'elle ne soit commencée dans les six mois qui suivent la commission de l'infraction.

Une autre loi qui est contenue au c. 47 des Statuts Refondus de Québec 1941, intitulée *Loi de la Sûreté provinciale,* qui s'applique aux membres de la police judiciaire, chargés de la recherche des offenses et infractions criminelles, et des contraventions aux lois de la province; à la gendarmerie chargée du maintien de la paix; à la police de la route, ainsi qu'à la police des liqueurs, est, en vertu de l'art. 36 du même chapitre, une loi qui prévaut sur toute autre loi. Cet article qui est du droit nouveau et qui fait partie du c. 47 en vertu d'un amendement passé en 1938, 2 Geo. VI, c. 76, est ainsi rédigé:

36. Les dispositions de la présente loi prévalent, en cas d'incompatibilité, sur celle de toute autre loi générale ou spéciale.

Il s'ensuit donc que la Sûreté provinciale est régie par une loi spéciale, qui doit nécessairement prévaloir sur les dispositions du c. 18. C'est la conclusion à laquelle en est unanimement arrivée la Cour du banc de la reine, et je m'accorde avec celle-ci sur ce point qui présente une importance capitale pour la détermination du présent litige. L'article 24 en effet contient une disposition qui régit le recours en dommages-intérêts contre les officiers de la Sûreté, *pour les actes qu'ils ont posés en cette qualité.* Cet article ne dit pas qu'ils sont exempts de responsabilité, mais il stipule clairement que l'action doit être instituée dans un délai rigoureux de *six mois.* Si ce n'était de cet article, la demanderesse ne serait déchue de son droit d'action qu'après l'expiration d'un délai de deux ans, en vertu des dispositions de l'art. 2261, para. 2, C.C. L'article 24 se lit ainsi:

24. Toute action dirigée contre un officier de la Sûreté par suite d'un acte qu'il a accompli ou d'une plainte qu'il a portée *en cette qualité d'officier* doit être précédée d'un avis d'au moins trente jours, donné par écrit au défendeur, et intentée dans le district où ledit acte a été posé ou ladite plainte logée.

Cette action se prescrit par six mois.

Comme on peut le constater, à la lecture de l'article ci-dessus du c. 47, et des arts. 5 et 7 du c. 18, il y a de substantielles différences. Ainsi, en vertu des art. 5 et 7 du

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c. 18, on exige des officiers, pour qu'ils obtiennent la protection de la loi, *qu'ils aient agi de bonne foi* dans l'exécution de leurs fonctions, tandis qu'en vertu de l'art. 24 du c. 47, tout officier de la Sûreté bénéficie de la prescription de six mois, s'il a accompli un acte ou a porté une plainte *en cette qualité d'officier.*

Dans la cause de *Chaput v. Romain*[1], la question de déchéance ne se présentait que quant à un défendeur seulement. Deux des défendeurs avaient été poursuivis dans les délais légaux, et quant au troisième, Chartrand, cette Cour en est venue à la conclusion qu'il ne pouvait bénéficier des dispositions du c. 18, parce qu'il avait *agi de mauvaise foi.* Ceci était strictement conforme au texte clair et précis de la loi. Il a été de plus décidé par certains membres de cette Cour, que la signification de l'action faite à deux des défendeurs en temps utile, ne pouvait s'appliquer au troisième parce que la forclusion ne peut être interrompue ni suspendue.

Mais dans la cause de *Chaput v. Romain,* la prescription énoncée à l'art. 24 du c. 47 n'a pas été examinée parce que, pour une raison que j'ignore, les défendeurs y ont spécifiquement renoncé, et ont refusé d'invoquer les bénéfices. Dans cette même cause, M. le Juge Kellock a retracé l'origine du statut (c. 18), et un examen des diverses législations l'a conduit à la conclusion que ce chapitre remontait à un statut de 1848 (11 et 12 Vict., c. 44) passé sous l'Union, et qui concernait la protection accordée à certains magistrats. Ce statut s'appliquait au Haut et au Bas Canada, et s'inspirait d'une loi du Parlement anglais de 1750 (*The Constables Protection Act,* 24 Geo. II, c. 44). M. le Juge Kellock a conclu, en conséquence, que c'est ce statut anglais de 1750 qui a servi de fondement au statut canadien, passé sous l'Union, et subséquemment, pratiquement accepté par la Province. Il a donc jugé que le c. 18, s'inspirant du droit anglais, n'accordait aucune protection au défendeur Chartrand parce que ce dernier avait agi sans autorité, avait posé un acte prohibé par le *Code Criminel,* et que la protection en vertu du droit anglais n'est accordée à un magistrat que s'il a agi *de bonne foi* dans l'exécution de ses fonctions. Le c. 18, s'inspirant évidemment de cette

[1] [1955] S.C.R. 834, 114 C.C.C. 170, 1 D.L.R. (2d) 241.

législation, mentionne en toutes lettres *que la bonne foi est un élément essentiel,* pour qu'un magistrat ou un officier public puisse se prévaloir du bénéfice du statut.

Mais le cas qui se présente actuellement n'est pas le même. Il ne s'agit plus du c. 18, mais bien du c. 47, dont les origines sont entièrement de sources différentes. Le premier remonte en effet à 1750, mais le second ne date que de 1870, soit trois ans après la Confédération et quatre ans après l'entrée en vigueur du *Code Civil,* qui est l'autorité suprême en semblable matière.

Il s'ensuit nécessairement que la responsabilité civile de Benoit ne peut reposer que sur l'art. 1053 du *Code Civil,* comme conséquence *d'un délit ou d'un quasi-délit,* si un dommage résulte à autrui, par la faute de l'auteur, soit par son fait, son imprudence, sa négligence ou son inhabilité. C'est ce qui a été décidé dans *Fabyan v. Tremblay, supra,* et maintes fois confirmé par des décisions subséquentes.

Le c. 47 suppose nécessairement une faute découlant de l'art. 1053 de la part du constable. Il faut que ce dernier *ait commis un délit, c'est-à-dire qu'il ait agi avec intention de nuire,* ou *qu'il se soit rendu coupable d'un quasi-délit qui ne suppose pas d'intention,* mais simplement un acte posé témérairement sans cause raisonnable ou probable; autrement, le bénéfice de la prescription serait inutile, car l'action sans l'existence d'une faute ne pourrait réussir.

Qu'il s'agisse donc d'un délit ou d'un quasi-délit, l'action normalement se prescrit par deux ans (2261 C.C.). Cet article dit:

L'action se prescrit par deux ans dans les cas suivants:

(2) pour dommages résultant de délits et quasi-délits, à *défaut d'autres dispositions applicables.*

La dernière partie de cet article *à défaut d'autres dispositions applicables* est d'une grande importance, car il y a ici d'autres dispositions qui s'appliquent au présent cas. Le législateur a voulu en effet, en plaçant dans nos statuts le c. 47, art. 24, qui encore une fois est une loi spéciale, que si un constable a agi *en cette qualité d'officier,* cette déchéance soit réduite à *six mois.* Pour que ce statut trouve son application, il n'est exigé qu'une seule condition, c'est que l'officier ait agi *en cette qualité d'officier.* Il n'est nullement question de *bonne foi* comme dans le c. 18. Dans ce

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dernier chapitre, les auteurs de *quasi-délits* seulement bénéficient de la déchéance de six mois, tandis que dans le cas prévu au c. 47, les constables jouissent de la protection du statut, qu'ils aient *commis un délit ou un quasi-délit.* La *bonne foi ou l'intention* n'est pas un élément nécessaire à l'application de la forclusion de six mois, pas plus que s'il s'agissait de l'application de l'art. 2261 C.C., qui limite à deux ans le droit d'action, ou de l'application du droit anglais, qui limiterait à six ans le recours d'une victime dans un cas identique. Dans ces cas, il est indiscutable que la bonne foi est immatérielle, à moins qu'elle soit un élément exigé par la loi, ce qui n'existe pas ici.

Si Benoit a commis une faute en agissant témérairement, sans cause raisonnable et probable, il agissait tout de même *en sa qualité de constable.* C'est évidemment comme constable qu'il a arrêté l'appelante et qu'il a ordonné son incarcération. Son acte imprudent ne fait nullement disparaître cette qualité, et ce n'est pas parce qu'il aurait commis une erreur ou une négligence qui entraînerait sa responsabilité civile, qu'il aurait agi en une autre qualité. C'est précisément à cause de cette faute qu'il aurait commise qu'il est responsable, mais la loi exige que l'action en réparation du dommage qui lui est imputable, soit instituée par la victime dans un délai de six mois, et ce délai est rigoureusement fatal.

L'arrestation en effet a eu lieu le 7 décembre 1946, et la plainte a été assermentée le 9 du même mois. L'action a été signifiée à Benoit le 12 juillet 1947, c'est-à-dire plus de sept mois après la commission des actes délictuels dont on se plaint.

Je ne me propose nullement de donner au texte de la loi, qui est claire et précise, une extension qui serait contraire à la volonté du législateur. Je ne crois pas que l'on puisse importer certaines conditions qui existent dans le c. 18 pour les incorporer dans le c. 47. Sans vouloir professer une exégèse excessive, je crois que les déchéances, ou plutôt les forclusions du genre de celles que l'on trouve à l'art. 24 du c. 47, sont impératives, et ne souffrent aucune suspension ni interruption. C'est l'impérieux devoir des tribunaux de les appliquer dans toute leur rigueur.

On est porté trop souvent à confondre la prescription libératoire d'une obligation civile, avec la forclusion imposée par la Législature. Cette prescription libératoire, par opposition aux délais préfix, est parfaitement distinguée par les auteurs et la jurisprudence. Planiol et Ripert, Droit Civil, vol. 7, 2e éd., p. 818, s'expriment de la façon suivante:

Il faut opposer les délais préfix ou délais emportant déchéance aux prescriptions proprement dites.

L'intérêt de cette distinction concerne d'abord les causes de suspension. Les délais emportant déchéance ne cessent pas de courir contre les mineurs ou les interdits, entre époux pendant le mariage et malgré l'impossibilité matérielle d'agir. Ils ne sont pas non plus susceptibles d'interruption. Par ailleurs, contrairement à la maxime *Quae temporalia sunt ad agendum, perpetua sunt ad excipiendum,* une fois le délai expiré, l'exception elle-même ne pourrait plus être opposée. La déchéance apparaît donc comme une mesure jouant automatiquement et inévitablement au bout d'un certain temps, quelles qu'aient été les circonstances intermédiaires.

Dans Dalloz, Jurisprudence Générale 1934, recueil périodique, p. 33, on lit ce qui suit:

Le délai de trois ans pendant lequel est ouverte l'action en révision de l'indemnité, en matière d'accidents du travail, a le caractère, non d'un délai de prescription, mais d'un délai de forclusion et de déchéance.

Par suite, les causes d'interruption et de suspension de la prescription prévues par le code civil ne s'appliquent pas à ce délai préfixe;

Spécialement, il n'est pas interrompu par une demande de révision formée devant un tribunal incompétent.

Josserand, Cours de Droit Civil, vol. 2, p. 529:

Les délais préfix sont régis par un tout autre statut que celui de la prescription.

1°. Ils ne comportent ni *suspension,* ni *interruption;* par définition même, ils sont préconstitués et ils s'accomplissent au jour dit, fût-ce un jour férié (Rennes, 27 déc. 1930, S. 1931, 2, 69), sans que cette déchéance puisse être conjurée ou différée, même à raison d'un cas de force majeure (Req. 28 mars 1928, S. 1928, 1, 308); la règle *contra non valentem agere non currit prescriptio* est donc sans application en ce qui les concerne;

2°. A plus forte raison, ces délais ne peuvent-ils être modifiés par la volonté des intéressés, pas plus dans un sens que dans l'autre: leur abréviation n'est pas davantage concevable que leur allongement;

Dans Revue Trimestrielle de Droit Civil, 1950, vol. 48, à la page 205, M. Henry Solus écrit ce qui suit:

Aussi comprend-on que poussant jusqu'à son terme la tendance qu'avaient manifestée MM. Ripert et Boulanger en écrivant que la rigueur de la prescription extinctive—telle qu'admise par eux—"l'apparente à un délai préfix", la plupart des auteurs aient écarté catégoriquement la notion de prescription extinctive et aient vu purement et simplement dans le délai de trois ans de l'art. 2279, al. 2, un *simple délai préfix,* à qui ne peuvent et ne doivent point être appliquées les règles ordinaires de la

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suspension et de l'interruption de la prescription. Telle est l'opinion d'Aubry et Rau (op. et loc. cit.), de M. Maurice Picard (Planiol et Ripert, op. et loc. cit.), de M. Voirin (Beudant et Lerebours-Pigeonnière, op. et loc. cit.) et de MM. Colin, Capitant et Julliot de la Morandière (op. et loc. cit.) adde sur les délais préfix, la note de M. Voirin, D. 1934. 2. 35.

Au même volume, aux pages 456 et 457, M. Michel Vasseur s'exprime ainsi:

> Aussi rigoureux que les délais de procédure, les délais de forclusion ne peuvent en principe comporter de prolongation, *ni prolongation directe, ni prolongation indirecte.*
>
> a) *L'absence* de toute possibilité *de prolongation directe* des délais de forclusion empêche, ou devrait empêcher, la prise en considération des causes de suspension ou d'interruption des délais de prescription. Peu importe enfin que le bénéficiaire de la forclusion ne puisse justifier d'un préjudice.

Vide également Beudant, Droit Civil Français, vol. 9, p. 151; Baudry-Lacantinerie, Droit Civil, vol. 28, p. 32; Aubry et Rau, Cours de Droit Civil Français, vol. 12, p. 534.

D'ailleurs, dans cette cause de *Chaput v. Romain, supra,* plusieurs membres de cette Cour, appliquant les principes énoncés par les auteurs ci-dessus, ont signalé la profonde distinction qui existe entre la déchéance d'action, qualifiée de délais préfix, et la prescription proprement dite. Ces délais préfix sont régis par un tout autre statut que celui de la prescription. Ils ne comportent ni suspension ni interruption; par définition même, ils doivent s'appliquer au jour dit, sans que la déchéance puisse être différée. Celle-ci est attachée au droit même d'instituer l'action.

Il résulte nécessairement que l'appelante ne peut pas prétendre que l'action, même si elle avait été signifiée aux autres défendeurs en temps utile, constituerait une *interruption* quant à Benoit. De plus, pour que l'interruption, si elle résultait de la signification de l'action aux autres, pût profiter à l'appelante, il eut fallu en vertu des dispositions de l'art. 2226 C.C., que l'action signifiée à Nadeau et Forget dans les délais légaux fût maintenue. En effet, une demande rejetée contre certains des débiteurs solidaires n'interrompt pas la prescription quant aux autres.

Toute la présente cause relève exclusivement du droit civil de la province de Québec, soit de l'application de l'art. 1053 C.C., source de toute responsabilité délictuelle et quasi-délictuelle, et de la forclusion de six mois édictée par l'art. 24 du c. 47 des Statuts Refondus. Cette dernière

loi est une *loi spéciale,* d'origine provinciale, et doit être interprétée restrictivement. Ce serait une erreur de lui donner une extension plus grande que celle que le législateur a voulu lui donner.

S'il est vrai que le c. 18 remonte à un statut impérial de 1750, il n'en est pas ainsi du c. 47 qui, datant de 1870, n'a pas de semblables origines. C'est pour cela que, pour la détermination de cette cause, je ne désire pas m'inspirer des précédents du common law, qui à mon sens, n'ont aucune application, et ne peuvent nous aider à la solution de ce litige.

Dans la cause de *Beattie v. Kozak*[1], cette Cour, interprétant un statut de la province de Saskatchewan, a décidé que quelqu'un qui procédait à l'arrestation d'une autre personne en vertu des dispositions du *Mental Hygiene Act,* devait agir "de bonne foi", s'il voulait bénéficier de la prescription de six mois mentionnée à l'art. 64. Mais cette loi contient une disposition (art. 61), que la protection n'est accordée que si la personne qui procède à l'arrestation a agi "de bonne foi". C'est précisément cette absence de "bonne foi" et de cause raisonnable qui a été la *ratio decidendi* de la majorité de la Cour. Ce statut de la Saskatchewan est, comme on le voit, différent de celui qui est actuellement sous étude.

Pour résumer, je suis d'opinion que l'appel logé contre Nadeau et Forget doit être rejeté, parce que ces derniers n'ont pas commis de faute qui aurait pu engendrer leur responsabilité sous l'empire de l'art. 1053 C.C. Quant à Benoit, s'il a commis un délit en agissant intentionnellement, ou un quasi-délit comme conséquence de négligence, d'inhabilité ou d'imprudence dans l'exercice de *sa qualité d'officier,* l'action lui a été signifiée tardivement, et l'appel doit être également rejeté quant à lui.

On ne peut certainement pas faire revivre une déchéance que prononce la loi civile, en s'inspirant de principes empruntés à une conception légale d'un droit différent qui n'a pas d'application dans la province de Québec. Il n'est pas inopportun de rappeler ici ce qui a été dit par cette Cour dans *Desrosiers v. Le Roi*[2], où les droits d'un tiers

[1] [1958] S.C.R. 177, 120 C.C.C.1, 13 D.L.R. (2d) 1.
[2] (1920), 60 S.C.R. 105, 55 D.L.R. 120.

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vis-à-vis le mandataire et le mandant ont été discutés. On a refusé d'y appliquer les principes du common law qui veut que l'action par le tiers contre l'un empêche le recours contre l'autre, et M. le Juge Anglin, tel qu'il était alors, dit ce qui suit à la page 119:

> This case affords an excellent illustration of the danger of treating English decisions as authorities in Quebec cases which do not depend upon doctrines derived from the English law.

A la page 125, M. le Juge Brodeur exprime les mêmes vues, et à la page 126, voici ce que dit M. le Juge Mignault:

> Avec toute déférence possible, qu'il me soit permis de dire que je ne partage pas l'opinion du savant juge. Si les articles 1716 et 1717 du code civil étaient empruntés à la fois de Pothier et du droit anglais, ce ne serait pas une raison de dire que les principes généraux du droit anglais doivent être adoptés pour résoudre les questions auxquelles ces articles donnent lieu. Je ferais plutôt prévaloir la doctrine de Pothier et de l'ancien droit français, d'autant plus que les codificateurs ne disent pas que ces articles sont *empruntés* au droit anglais, mais, au sujet de l'article 1727 C.C., ils font remarquer que cet article est basé sur l'exposé de la doctrine de Pothier, laquelle, ajoutent-ils, *est d'accord avec* les lois anglaise, écossaise et américaine. Il me semble respectueusement qu'il est temps de réagir contre l'habitude de recourir, dans les causes de la province de Québec, aux précédents du droit commun anglais, pour le motif que le code civil contiendrait une règle qui serait d'accord avec un principe du droit anglais. Sur bien des points, et surtout en matière de mandat, le code civil et le *common law* contiennent des règles semblables. Cependant, le droit civil constitue un système complet par lui-même et doit s'interpréter d'après ses propres règles. *Si pour cause d'identité de principes juridiques on peut recourir au droit anglais pour interpréter le droit civil français, on pourrait avec autant de raison citer les monuments de la jurisprudence française pour mettre en lumière les règles du droit anglais.* Chaque système, je le répète, est complet par lui-même, et sauf le cas où un système prend dans l'autre un principe qui lui était auparavant étranger, on n'a pas besoin d'en sortir pour chercher la règle qu'il convient d'appliquer aux espèces bien diverses qui se présentent dans la pratique journalière.

Dans une cause de *Curley v. Latreille*[1], il a été décidé par M.M. les Juges Anglin, Brodeur et Mignault qui composaient la majorité de la Cour, ce qui suit:

> English decisions can be of value in Quebec cases involving questions of civil law only when it has been first ascertained that in the law of England and that of Quebec the principles upon which the particular subject matter is dealt with are the same and are given the like scope in their application, and even then not as binding authorities but rather as *rationes scriptae*.

Je partage ces vues sans aucune restriction ni qualification.

[1] (1920), 60 S.C.R. 131, 55 D.L.R. 461.

Je suis en conséquence d'opinion que l'appel contre les trois intimés doit être rejeté avec dépens.

The judgment of Rand and Judson JJ. was delivered by

RAND J.:—The facts here are not in dispute. The only material inference urged attempts to charge the appellant through association with three other persons with the distribution of the issue of a publication containing an article headed "Quebec's Burning Hate" alleged at the time to be seditious libel. It is sufficient to say that the inference is quite unwarranted; all four persons were acting individually in distributing such numbers of "The Watch Tower" and "Awake" as might be furnished them. The arrest and prosecution, as the Court of Queen's Bench[1] found, were quite without justification or excuse and the detention of the appellant over the weekend was carried out in a manner and in conditions little short of disgraceful.

The real defence is procedural, that the action was not begun—by service of the writ—within six months as prescribed by two statutes, the *Provincial Police Act,* R.S.Q. 1941, c. 47, s. 24, and the *Magistrate's Privilege Act,* R.S.Q. 1941, c. 18, ss. 5 and 7. The former is as follows:

> 24. Every action against an officer of the Police Force by reason of an act done by him or a complaint lodged by him in his official capacity, must be preceded by at least thirty days' notice to the defendant, in writing, and be brought in the district wherein the said act was done or the said complaint lodged.
>
> Such action shall be prescribed by six months. 4 Geo. VI, c. 56, s. 24.

The latter:

> 5. No such action or suit shall be brought against any justice of the peace, officer or other person acting as aforesaid, for anything done by him in the performance of his public duty, unless commenced within six months after the act committed. R.S. 1925, c. 146, s. 5.
>
> * * *
>
> 7. Any such justice of the peace, officer or other person, shall be entitled to the protection and privileges granted by this Act in all cases where he has acted in good faith in the execution of his duty, although, in doing an act, he has exceeded his powers or jurisdiction, and has acted clearly contrary to law. R.S. 1925, c. 146, s. 7.

[1] [1958] Que. Q.B. 237.

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Section 2 of c. 18 enumerates the persons embraced within its provisions: "Any justice of the peace, officer or other person fulfilling any public office . . .", and it was not seriously contested that both statutes apply to police officers subject to the effect of s. 36 of c. 47 by which provisions of the *Magistrate's Privilege Act* incompatible with those of the *Provincial Police Act* are overridden; and it is the submission of Mr. Monette that there is such an incompatibility.

Section 24 is said to fix an absolute period of six months for bringing action against a police officer for any act done "in his capacity" as an officer regardless of malice, lack of belief in facts or any other objectionable element or circumstance; that is to say, so long as the act is the kind of act authorized to be done, in this case, arrest, in which the officer objectively purports to exercise his authority and to act as such, the civil proceeding for any wrong done must be brought within six months. This means that "good faith" as found in s. 7 is not a condition of the limitation under s. 24.

These words, "good faith", were examined by this Court in the case of *Chaput v. Romain et al*[1], and the interpretation there given in the factual aspect was this: unless the facts or those honestly believed to be the facts are such as to justify arrest, the officer cannot be said to be acting in good faith. By the judgment of this Court in *Beatty and Mackie v. Kozak*[2], an action commenced after 1949, that interpretation had been made definitive and is now the governing rule for similar language throughout Canada. Is that "good faith" required of police officers in Quebec under s. 24?

What is the meaning in s. 24 of "an act done . . . in his official capacity"? Is it different from "anything done by him in the performance of his public duty" in s. 5 or "of his duty" as in s. 7? An act done in his "official capacity" is surely identical with an act "in performance of his public duty" or his "duty"; if the act is beyond his authority, it cannot be said to have been done in his "official capacity".

[1] [1955] S.C.R. 834, 114 C.C.C. 170, 1 D.L.R. (2d) 241.
[2] [1958] S.C.R. 177, 120 C.C.C. 1, 13 D.L.R. (2d) 1.

I am unable to make any distinction between them; they deal with the same thing, the objective act with its required subjective accompaniments.

Section 5, in prescribing a period of six months for bringing action, is in party with s. 24. Is the effect of s. 7 in specifying good faith to qualify s. 5 by adding that element to it, or does "anything done by him in the performance of his public duty" necessarily imply "good faith"? If an officer maliciously or with no belief in facts justifying arrest proceeds without warrant, can be said to be acting "in performance of his public duty" or in his "official capacity"? I should think that an honest mind, intent on enforcing law, and belief in facts justifying arrest are essential elements in the performance by an officer of his public duty and of any act done "in his official capacity". The words of s. 7, "in good faith", are, in relation to s. 5, words of amplification, not limitation, explicative not qualifying; so interpreted, that state of mind is as applicable to police officers under s. 24 as under s. 7.

Even were that question doubtful, I should come to the same conclusion. Section 5 and s. 24 are procedural benefits which assume a liability for a trespass and which are exceptions from the general limitation of proceedings. Inconsistency between s. 24 and s. 7 in this respect should be clear before such a wide and absolute scope is attributed to s. 24. That was the view taken by the Court of Queen's Bench in *Trudeau v. Kennedy*[1], and with it I am in agreement.

To Benoit it was patent that the appellant was not distributing the issue of the paper containing the alleged libel, nor was there a scrap of evidence on which he could have acted to connect her with the acts of the other three distributors. All this is concluded by what took place at the police station when, in what is said to be the routine practice, Miss Lamb was offered her liberty in exchange for a release of claims, a proposal which she spurned. There was lacking that state of mind necessary to the benefit of the limitation under either s. 7 or s. 24 and his defence must be rejected.

[1] (1938), 42 Que. P.R. 258.

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In the case of Nadeau I agree that it has not been shown that he was a party to the arrest. In that of Forget, for the reasons given by my brother Cartwright, I would dismiss the appeal on the ground that reasonable and probable cause was present: but I desire to make it clear that the question of malice has not been considered by me and remains unaffected by these reasons.

In view of all the circumstances, the case is one for substantial damages which I would fix at $2,500.

The appeal against Benoit should be allowed and judgment directed for the appellant in the sum of $2,500 with costs in all courts; the appeal against Nadeau and Forget should be dismissed without costs.

The judgment of Locke and Martland JJ. was delivered by

LOCKE J.:—The appellant, Louise Lamb, was on December 7, 1946, a Minister of the Witnesses of Jehovah and resident at the City of Verdun in Quebec. On that date she was standing at the corner of Church and Wellington Streets in that city, holding in her hands pamphlets called "The Watchtower" and "Awake", publications of the religious body of which she was a member. Her activities apparently consisted of giving copies of these publications to any interested persons passing upon the street. They were described by her as being biblical magazines and their distribution part of the missionary work of the organization. On the other three corners of the intersection three other young women, who were members of the same religious denomination, were standing holding in a similar manner some other publications of the Jehovah Witnesses, making them available to persons passing on the street. Among the publications in the possession of the latter three persons was a copy of the publication "The Watchtower" issued under the date December 8, 1946, which contained an article designated "Quebec's Burning Hate for God and Christ and Freedom" which, as the result proved, was highly obnoxious to large numbers of other residents of the Province of Quebec.

The appellant was not in possession of this latter publication and there is no evidence that she knew of its existence and it is not suggested that the contents of the publications which were in her possession were objectionable in any way. If there was any by-law of the City of Verdun or any other regulation which prohibited the appellant from conducting herself in this manner, we have not been referred to it and it was not proven. The appellant had not gone to the place in question by arrangement with the other three young women and there is no evidence that she was a party to their actions.

While the appellant was thus standing on the street she was approached by the respondent Nadeau, a constable of the provincial police force, who told her that he wanted her to come with him and that there was someone in a motor car nearby who wanted to question her. The same request had apparently been made before this to the other three women and they had complied with it. The appellant followed Nadeau to this car and was instructed by him to get into it. In the car the respondent Benoit was seated, together with another policeman named Pelland, acting as chauffeur.

Benoit is described in the evidence as a special officer of the provincial police and, according to his own evidence, he was in charge of the small party of police officers who went with him to the place in question. According to the appellant, Benoit examined a small hand bag which was in her possession which contained copies of "The Watchtower" and "Awake" and said: "There is nothing here" and that they could let her go. As she was about to step out of the car, however, he asked her to show him her purse and, looking through it, found what was said to be a letter from The Watchtower, Bible and Tract Society to the appellant and, after reading this, he instructed her to stay with them. There is no evidence as to the contents of this document. The party were then driven to the provincial police headquarters in Montreal, where all four were left in charge of the matron. A few minutes later, Benoit, who had left them, returned and informed them that they were to remain in custody over the weekend

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and they were accordingly placed in a cell, where they were kept until Monday morning, December 9. Benoit signed an order for their detention.

No information had been laid either against the appellant or the others and no warrant had been issued for their arrest. Their fingerprints were, however, taken on the Saturday evening and they were photographed. They were not permitted to telephone, either to a lawyer or to their friends.

On Monday morning, according to the appellant, she was informed that she was to be taken to Court. Before she appeared, however, Benoit told her that he had good news for her, that he had made arrangements to have her released and she was then taken by him to his office in police headquarters. Benoit then informed her that there were "certain formalities" to be complied with in order that she might be released and asked her to sign several slips of paper, three of which were statements to the effect that she would take no action against the provincial police for having detained her. The appellant refused to do this, whereupon he said that if she did not want to sign the releases he would have to charge her with sedition and that it would cost her a lot of money to get out of gaol. Benoit then left her, returning shortly thereafter to enquire if she had changed her mind and would sign the releases and, upon her again refusing, said that he would have to charge her and took her before a judge in his chambers and read the charge which had been laid against her in the meantime by the respondent Forget. Later during the afternoon of the same day she was released on bail.

The information laid by Forget, sworn on December 9, 1946, before a judge of the Sessions of the Peace, stated that the informant had reason to believe and did believe that the present appellant and the three young women referred to had on December 7, 1946, published a seditious libel entitled "Quebec's Burning Hate for God and Christ and Freedom"

by exhibiting it in public, by delivering it from door to door with the view to its being read, the said writing being likely to raise discontent and disaffection among His Majesty's subjects and being likely to provoke feelings of ill will and hostility between different classes of subjects of His Majesty in Canada.

A second charge contained in the information stated that the appellant and the three other women had conspired together and with other persons unknown to publish without legal justification or excuse the seditious libel, to exhibit it in public and to deliver it from door to door, the said writing being likely to raise discontent or disaffection among His Majesty's subjects.

The information, according to the evidence of Forget, was in a form which had been drafted at the City of Quebec for use apparently in proceedings against those distributing literature of Jehovah's Witnesses considered to be objectionable in law as being seditious. Forget, who laid the information at the request and on the direction of Benoit, had not been informed by the latter either that the appellant was exhibiting the publication mentioned or was delivering it from door to door. There is no evidence that the appellant did either and, according to her own evidence, on December 7, 1946, she had done nothing other than to stand offering the unobjectionable publications above mentioned. Benoit had not informed Forget of any facts which could possibly support the charge of conspiracy, which was the second of the two charges made in the complaint. It is sought to support Forget's conduct in this matter by saying that it was the practice of the police authorities concerned to have charges laid in this manner.

On January 10, 1947, the appellant and the three other women appeared before a judge of the Sessions of the Peace and Nadeau and Benoit gave evidence. At the conclusion of the proceedings the complaint was dismissed. Benoit said that he had not found the offending publication in the possession of the present appellant and no evidence was offered in support of the charge of conspiracy.

By a notice dated January 28, 1947, the appellant, through her solicitors, informed Nadeau and Benoit of her intention to bring an action against them for false arrest and for damages, and a like notice was given to Forget by a letter dated February 10, 1947.

The action was commenced on July 10, 1947. The declaration stated the facts in connection with the arrest and detention of the appellant and the information laid against her by Forget which, it was claimed, was done upon the

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instructions of Benoit, Nadeau and Pelland, the latter being also named as a defendant, and asserted that the arrest was unlawful and the charges laid and the prosecution conducted without reasonable or probable cause. All of the facts complained of were alleged to have ben done maliciously and in bad faith by the defendants.

The defence filed may be summarized as being that the appellant was one of a group of what were designated in the pleading as "zélateurs" known under the name of the Witnesses of Jehovah, who were engaged in concert in distributing seditious literature of a character calculated to create animosity and discontent among the population.

As to Benoit, it was said that he had acted on the instructions given to him by the representatives of the Crown and all of the defendants asserted that they had acted in good faith in the discharge of their duties as police officers. A further defence pleaded was that all of the defendants having done the acts complained of in the execution of their public duties, the action was barred since it had not been commenced within six months following the commission of the alleged offences.

The defence that the action had not been brought in time is based upon the provisions of chapters 18 and 47, R.S.Q. 1941. The first of these statutes called the *Magistrate's Privilege Act* provides that any officer or other person fulfilling any public duty sued for damages by reason of any act committed by him in the execution thereof may, within one month after the service of the notice mentioned in art. 88 of the *Code of Civil Procedure,* offer to pay a compensation to the party complaining and, if the sum be not accepted, may plead such offer in bar to the action brought against him and deposit the amount offered. Section 5 provides that no such action shall be brought against any such officer "for anything done by him in the performance of his public duty" unless commenced within six months after the act committed. Section 7 provides that such officer shall be entitled to the protection and privileges granted by the Act in all cases where he has acted in good faith in the execution of his duty, although in doing an act he has exceeded his powers or jurisdiction and acted clearly contrary to the law.

The second statute referred to is an *Act relating to the Quebec Provincial Police Force* and, by s. 24, provides that every action against any officer of the police force by reason of an act done by him or a complaint lodged by him in his official capacity must be preceded by at least thirty days' notice in writing to the defendant, and that such action shall "be prescribed by six months". This Act does not contain any provision similar to that contained in s. 7 of the *Magistrate's Privilege Act,* a fact which appears to have been considered as of some significance.

Montpetit J., by whom the action was tried, dismissed it with costs, and that judgment has been upheld by a unanimous judgment of the Court of Appeal[1].

As to the respondent Nadeau, the learned trial judge, while considering that in any event the action should fail as not having been brought within the period of six months following December 7, 1946, was of the opinion that no cause of action was disclosed by the evidence, since he had merely complied with the order of his superior Benoit in approaching the appellant and asking her to come over to the car in which Benoit was seated. The fact that he had told her to get into the car was not mentioned. It had not been shown that Nadeau had taken any part in what occurred thereafter, other than to give evidence at the preliminary hearing on January 10, 1947.

The action against the defendant Pelland was dismissed for the reason that it had not been shown that he had done more than drive the automobile in which the appellant was conveyed to the police headquarters. As the appellant did not appeal against that portion of the judgment dismissing the claim as against Pelland, it does not require further consideration.

As to Forget, the learned judge said:

> Le défendeur Forget est officier de liaison de la Sûreté. Ses fonctions consistent à signer un bon nombre des plaintes de la Couronne (sinon toutes) et à en suivre la marche. Il n'accompagnait pas les autres défendeurs, le 7 décembre 1946. Le seul acte qu'il a posé et qui touche la demanderesse a été, le 9 décembre 1946, d'apposer sa signature au bas de la plainte portée contre cette dernière, et ce, suivant la coutume, en se fiant aux renseignements que ses chefs lui ont fournis. De là il découle que la seule infraction que la demanderesse pourrait reprocher

[1] [1958] Que. Q.B. 237.

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au défendeur Forget a été commise le 9 décembre 1946. Incidemment, la Cour croit devoir signaler ici que, même en admettant, pour fins de discussion, que cette façon de procéder ne soit pas la plus recommandable, surtout pour l'officier de liaison concerné qui s'expose à des ennuis, celui-ci n'a pas agi malicieusement ou de mauvaise foi, mais simplement dans l'exercice normal de ses fonctions.

As to the claim against Benoit, no finding was made in regard to the claim that in arresting the appellant, in bringing about the laying of the charge which contained statements known by him to be false, and in assisting in the prosecution of that charge he had acted maliciously and without reasonable and probable cause, but the learned judge held that the action failed as not having been brought within six months from December 7, 1946, in respect of the claim for false arrest, or within six months of January 10, 1947, in respect of the claim for malicious prosecution, even had Benoit acted in bad faith and maliciously.

The principal judgment in the Court of Appeal[1] was written by Mr. Justice Pratte. As to Nadeau, that learned judge agreed with the judgment at the trial that he had merely executed a legal order of his superior and, in doing so in the manner disclosed by the evidence, had committed no fault. In referring to the evidence, again no mention is made of the fact that, in addition to asking the appellant to come to the motor car in which Benoit had remained, Nadeau had, according to the appellant, told her to get into the car.

Pratte J. further considered that no cause of action was disclosed against Forget. The reasons given for this conclusion are as follows:

> Quant à Forget, sa fonction, au quartier-général de la Sûreté, consistait à porter les dénonciations d'après les rapports faits par les autres officiers. Dans le cas qui nous intéresse, il a porté la dénonciation à la demande de Benoit, après que celui-ci eût affirmé que tel était le désir du procureur de la Couronne. C'est tout ce qu'il a fait; il n'avait pas été mêlé à l'affaire auparavant, et il n'y a pas participé par la suite. Il est vrai qu'il ne s'est pas enquis de la preuve qu'on était en mesure de présenter pour établir l'accusation, mais il n'était pas tenu de le faire; il suffisait qu'il fût croyablement informé des faits imputés à l'appelante. Or, sur ce point, on ne saurait sûrement pas lui reprocher de s'être fié à la parole de son confrère.

[1] [1958] Que. Q.B. 237.

Je dirais donc que Forget n'a commis aucune faute en déposant qu'il avait été croyablement informé que l'appelante s'était rendue coupable de l'acte mentionné dans la dénonciation.

No mention is made of the fact that Benoit had only told him the nature of the complaint that he wished to be made, that is, of a seditious libel, and had not given him the facts regarding the actions of the appellant, though he told him that it was the wish of the Crown prosecutor that a charge be laid. Forget had not consulted and did not consult the Crown prosecutor. Benoit, he said, had given him no special instructions but gave him the names of the persons to be charged, which Forget then caused to be filled in in the form already in his possession, and then signed and swore to the complaint. He knew none of the parties charged, nothing about the circumstances and made no enquiries. Admittedly, the statement in the complaint that he had been credibly informed that the appellant had published the pamphlet referred to in the complaint by exhibiting it in public and by delivering it from door to door was untrue and there were no facts given to him by Benoit or anyone else upon which to base the charge of conspiracy.

As to Benoit, after mentioning the fact that it was contended on behalf of the present appellant that he had not acted in good faith, the learned judge said:

Sur ce point, il me paraît assez clair que l'appelante a raison. Je ne vois pas qu'il soit possible de dire que Benoit a agi de bonne foi dans l'exécution de ses devoirs lorsqu'il a fait porter la dénonciation. Ayant offert sa liberté à l'appelante—à la condition qu'elle signât un écrit qui l'exonérerait de toute responsabilité—il n'est pas raisonnable de penser qu'il la crût coupable. Mais quoi qu'il en soit, le point ne me paraît pas important. En effet, je dirais que, même si Benoit ne doit pas être admis à profiter des dispositions du chapitre 18, il faut encore conclure que l'action n'a pas été prise en temps utile, pour la raison que voici.

Having said this, however, it was pointed out that this did not prevent the application of the limitation imposed by the Quebec *Provincial Police Force Act,* which does not contain any provision similar to s. 7 of the *Magistrate's Privilege Act* which in terms requires that the act complained of be done in good faith. Considering that Benoit had caused the information to be laid in his capacity as an officer of the police force and that, as the action had

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not been commenced within six months of the date of the arrest complained of or of the dismissal of the criminal charge, he held that the action failed.

It is my opinion that the appeal against the judgment upholdling the dismissal of the charge against Nadeau should be dismissed. Nadeau, it is true, was one of the party who proceeded with Benoit to the place in question, but it was not shown that he was aware that the latter had any intention of arresting or detaining the appellant or that he had not a warrant for her arrest and while, in my view, his act in asking the appellant to come to the car where Benoit was seated and then instructing her to get into the car made him a party to the false arrest, it is not shown that he took any further part in the matter or that he was a party to any detention in the police station or in the laying of the criminal charge against her. As to the participation in the unlawful arrest, I think the position of Nadeau does not differ from that of the appellant Mackie in the case of *Beatty v. Kozak*[1] which was recently before this Court. As, however, the proper inference to be drawn from the evidence is that Nadeau believed in the existence of facts which would justify the arrest, and there is nothing to support the charge that he acted maliciously or in bad faith, I think the claim is prescribed by s. 24 of c. 47.

The case against Forget presents more difficulty. The limitation imposed by s. 5 of the *Magistrate's Privilege Act* is in respect of actions for anything done by an officer in the performance of his public duty and s. 7 declares that such officer shall be entitled to its protection in all cases where he has acted in good faith in the execution of his duty. Section 24 of the Quebec *Provincial Police Force Act* requires that every action against an officer of that force, by reason of any act done by him or a complaint lodged by him in his official capacity, must be preceded by at least thirty days' notice and that "such action shall be prescribed by six months". As the latter statute does not say in terms that it applies to acts done in good faith, it is apparently contended that good faith is not necessary.

[1] [1958] S.C.R. 177, 195, 120 C.C.C.1, 13 D.L.R. (2d) 1.

I am unable, with respect, to agree with this. To be entitled to the benefit of the statute it is necessary that the officer should have a *bona fide* belief in facts which would justify his conduct. In Lightwood on Time Limit of Actions, at p. 396, after reviewing the authorities upon such cases decided under the *Public Authorities Protection Act 1893*, it is said that:

> The mere *bonâ fide* belief that he has power to do the act complained of is not enough; he must believe in facts which would give him the power if they existed.

This statement is, in my opinion, borne out by the authorities and is applicable to cases such as this where it is sought to invoke the section of the *Provincial Police Act*.

In *Selmes v. Judge*[1], Lord Blackburn said in part:

> I agree that if a person knows that he has not under a statute authority to do a certain thing, and yet intentionally does that thing, he cannot shelter himself by pretending that the thing was done with intent to carry out that statute.

The statement in the information sworn to by Forget that he had been credibly informed that the appellant had published the pamphlet referred to by exhibiting it in public and by delivering it from door to door was entirely without foundation. As the evidence shows, the statement was false. As to the portion of it charging conspiracy with the other three, Forget had no information to support such a charge. He swore the information, apparently simply because these were the offences described in the forms he had received from Quebec, he merely filling in the appellant's name before taking his oath.

The claims against Forget are the same as those against Benoit, namely, for false arrest, false imprisonment and malicious prosecution. As to the first, he was not a party to the arrest: as to the second, I have come to the conclusion that the evidence does not show clearly that the imprisonment of the appellant up to the time when she appeared before the judge and was remanded resulted from the laying of the information. To prove this was an essential of the cause of action for false imprisonment. 33 Halsbury, 2nd ed., p. 38.

[1] (1871), L.R. 6 Q.B. 724 at 727, 19 W.R. 1110.

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There remains the claim for damages for malicious prosecution. It is no part of the public duty of a police officer to swear to an information falsely stating that he has been credibly informed that the person to be charged had committed a criminal offence, in the complete absence of any such information and when enquiry would disclose that the charge was entirely without foundation. It has been said that it was the usual procedure for the police officer to lay informations in this way, but that contention is irrelevant in determining the question as to whether the act complained of was done in good faith, in performance or intended performance of his duty within the meaning of the statutes. It does, however, have some bearing upon the issue of malice. For reasons which I will state in more detail in dealing with the claim against Benoit, neither of the statutes relied upon apply to a claim for damages against a police officer for a malicious prosecution if malice in law be established in the action. The learned trial judge has, however, found that he did not act maliciously and, in my opinion, we are not justified upon the evidence in this case in reversing that finding.

The claim against Benoit rests upon a different footing. He does not say that he was ordered to take the appellant or the others into custody and there were no circumstances entitling him to arrest the appellant without a warrant, and his conduct was from the outset unlawful. The appellant was not committing any offence at the time she was taken in charge and when, at police headquarters, she asked with what offence she was charged the information was refused to her.

As no warrant had been issued either for the arrest or detention of the appellant, the person in charge of the cells apparently required some written authority to detain her and this appears to have been given by Benoit in a form the nature of which is not disclosed by the evidence. According to Benoit, a Captain Quenneville told him to detain them until Monday for the purpose of laying charges. On Monday morning, he says that he consulted Mr. Oscar Gagnon, then counsel for the Crown, to whom he told what

evidence there was against the four persons and says that Mr. Gagnon said that the evidence against the appellant was less strong and;

que dans ces conditions-là évidemment si elle passait par la routine habituelle du bureau de la libérer.

Asked to describe what this "routine" was, he said:

C'est la règle établie lorsqu'on lâche une personne de faire signer un reçu et de remettre ses effets et de faire signer une formule de désistement de recours.

He does not say that he told Mr. Gagnon that the appellant was not exhibiting the pamphlet to which exception was taken in public or delivering it from door to door or that there was any evidence that she had engaged in a conspiracy with others to do so, and does not suggest that Mr. Gagnon advised the laying of such a charge. He admits that thereafter he demanded that the appellant sign releases and told her she would be liberated if she signed, and says that after she refused he was instructed, either by Quenneville or by Beauregard, as senior police officer, to have the information laid. He was not sure which of them had given these instructions and neither of these officers gave evidence at the hearing. He then went to Forget and told the latter that he had instructions from the Crown to lay a charge.

It is admitted by Benoit that he instructed Forget to lay the information but he denies having told him that the appellant had been distributing the pamphlet mentioned in the complaint, saying that he had merely stated the facts to him.

In my opinion, neither of the statutes relied upon apply to the claim for damages against Benoit for false arrest, false imprisonment or for malicious prosecution.

It is to be remembered that Benoit had not been instructed to take the appellant into custody and it was only upon the discovery of a letter in the appellant's purse, the contents of which are not disclosed, that he decided to take her to the police headquarters. There were no circumstances justifying the police officer in arresting the appellant without a warrant. Sections 30, 32, 34, 35, 36, 646, 647 and 648 of the *Criminal Code* then in force afford no justification

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for the arrest. The onus of proving facts justifying an arrest without warrant, in my opinion, lies upon the officer making the arrest. Lightwood, p. 396.

The appellant was detained in custody from the time of her apprehension on December 7 until the information was laid by Forget on the morning of December 9, at the instance of Benoit, and, again, the evidence does not disclose that he believed that she had committed any offence justifying this detention. Indeed, as his conduct showed, the fact that he offered to release the appellant if she would sign the document, which presumably released him as well as the others concerned from any claim for damages, appears to me to show that he was well aware that the arrest and detention had been unlawful.

In my opinion, the statutes relied upon are each to be construed in the same manner as the *Public Authorities Protection Act 1893*, 56-57 Vict. (Imp.), c. 61. That statute refers to "actions commenced against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament or of any public duty or authority". As was pointed out in the judgment of Kellock J. in *Chaput v. Romain*[1], where the authorities are reviewed, the Quebec statutes were based upon the earlier English statutes to the same effect as the *Public Authorities Protection Act 1893* which merely declared the law as stated in the numerous decisions upon the earlier statutes, and they are subject to the same rules of construction. What was said by Lord Blackburn in *Selmes v. Judge* is to the same effect as the judgment of Bayley J. in *Cook v. Leonard*[2], and by Lopes J. in a later case: *Agnew v. Jobson*[3].

As to the claim for malicious prosecution against Benoit, the matters necessary to be proved are the prosecution, that is to say, that the law was set in motion against the appellant on a criminal charge, that the prosecution was determined in her favour, that it was without reasonable and probable cause and that it was malicious. In the case of Benoit, while the trial judge did not deal with the matter, Pratte J. has found that he did not act in good

[1] [1955] S.C.R. 834 at 856, 114 C.C.C. 170, 1 D.L.R. (2d) 241.
[2] (1827), 6 B. & C. 351 at 354, 108 E.R. 481.
[3] (1877), 47 L.J.M.C. 67, 13 Cox C.C. 625.

faith in causing the charge to be laid, a finding clearly supported by the evidence. It is impossible to sustain a contention that there was any reasonable or probable cause for the arrest, imprisonment or the prosecution, a fact which the conduct of Benoit indicates he realized. As to malice, the term in this form of action is not to be considered in the sense of spite or hatred against an individual but of *malus animus* and as denoting that the party is actuated by improper and indirect motives. Clerk and Lindsell on Torts, 11th ed., p. 870. In *Abrath v. North Eastern Railway*[1], Bowen L.J. said that the plaintiff in such an action must prove that the proceedings of which he complains were initiated in a malicious spirit, that is, from an indirect and improper motive and not in furtherance of justice.

In the present matter as the evidence discloses, Benoit first attempted to obtain a release from the appellant by threatening her with prosecution for sedition and, upon her refusing to sign, caused the information to be laid and the appellant retained in custody until she was released upon bail, and it was upon the charges so laid that she was tried and acquitted. The bad faith of Benoit has been found by the Court of Appeal and, in my opinion, the indirect and improper motive for the prosecution was clearly the hope that in some way the bringing of the charge might relieve Benoit and the others from the legal consequences of the false arrest and imprisonment, he well knowing that the charges were false. The fact that before instituting a criminal proceeding the proposed prosecutor lays all of the facts before counsel and acts on his advice is evidence relevant to the issue of reasonable and probable cause, if a prosecution is advised. But the evidence in the present case is clearly quite insufficient to enable Benoit to rely upon the decision in *Abrath's* case.

In these circumstances, the statutes relied upon have, in my opinion, no application. In Halsbury, vol. 26, at p. 497, dealing with actions against public authorities and public officers, it is said:

> In every case the defendant must have acted in good faith, and therefore actions for deceit or malicious prosecution may be commenced after the expiration of the six months' limit.

[1] (1883), 11 Q.B.D. 440.

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The authorities support this statement. In *Newell v. Starkie*[1], an appeal from the Court of Appeal in Ireland, where the *Public Authorities Protection Act 1893* was invoked as a defence, Lord Finlay said in part (p. 6):

> The second observation which I have to make is that the Act necessarily will not apply if it is established that the defendant has abused his position for the purpose of acting maliciously. In that case he has not been acting within the terms of the statutory or other legal authority. He has not been *bona fide* endeavouring to carry it out. In such a state of facts he has abused his position for the purpose of doing a wrong, and the protection of this Act, of course, never could apply to such a case.

Lord Atkinson agreed, saying in part (p. 7):

> It is perfectly true that a public official, acting in the exercise of a statutory or other authority, cannot be protected under that Act if he acts maliciously.

It has been contended that the cases decided in England interpreting the *Public Authorities Protection Act 1893* and the earlier Acts to the same effect are not to be considered in deciding the interpretation which is to be given to s. 24 of the Quebec *Provincial Police Force Act*. In support of this, what was said by Anglin J. in delivering the judgment of the majority of this Court in *Curley v. Latreille*[2], has been relied upon. That passage reads:

> English decisions can be of value in Quebec cases involving questions of civil law only when it has been first ascertained that in the law of England and that of Quebec the principles upon which the particular subject matter is dealt with are the same and are given the like scope in their application, and even then not as binding authorities but rather as *rationes scriptae*.

As to this, it is to be remembered that the question upon this aspect of the matter is simply one as to the construction of the language of a Quebec statute. Section 41 of the *Interpretation Act*, R.S.Q. 1941, c. 1, after saying that every provision of a statute, prohibitive or penal, shall be deemed to have for its object the remedying of some evil or the promotion of some good, reads:

> Such statute shall receive such fair, large and liberal construction as will ensure the attainment of its objects and the carrying out of its provisions according to their true intent, meaning and spirit.

[1] (1919), 89 L.J.P.C. 1, 83 J.P. 113.
[2] (1920), 60 S.C.R. 131, 55 D.L.R. 461.

Section 2 provides that the Act shall apply to every statute of the Legislature of the Province, unless and in so far as such application be inconsistent with the object, the context, or any of the provisions of such statute.

This language is indistinguishable in meaning from s. 15 of the *Interpretation Act* of Canada, R.S.C. 1952, c. 158, and appears in substantially this form in all of the other provinces in Canada, except Nova Scotia. In that province, s. 8(5) of R.S.N.S. 1954, c. 136, expresses the rule in a rather different form.

Section 41 of the *Interpretation Act* of Quebec apparently originated in s. 28 of c. 10 of the Statutes of the Province of Canada for 1849 which read:

> and every such Act and every provision or enactment thereof shall be deemed remedial whether its immediate purport be to direct the doing of anything which the Legislature may deem to be for the public good or to prevent or punish the doing of any thing which it may deem contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment, according to their true intent, meaning and spirit.

That section and s. 15 of the *Interpretation Act* of Canada are simply restatements in statutory form of what was said in the judgment of the Barons in the Court of Exchequer in *Heydon's* case[1].

The *Interpretation Act* of England does not contain this provision but the rule in *Heydon's* case is applied and has been for more than 300 years. It is the rule which was applied of necessity in the cases of *Selmes v. Judge, Cook v. Leonard and Agnew v. Jobson,* and by Lord Finlay and Lord Atkinson in the House of Lords in *Newell v. Starkie.*

In *Selmes v. Judge,* above referred to, the judgment is that of the Court of Queen's Bench and the language to be construed was that of 5 & 6 Wm. IV, c. 50, s. 109, providing that no action should be commenced "against any person for any thing done in pursuance of or under the authority of this Act" unless the prescribed notice had been given and action brought within three months. It was as to the construction of this provision that Blackburn J., with whom Lush and Hannen J. agreed, made the statement which I have quoted.

[1] (1584), 3 Co. Rep. 7(b), 76 E.R. 637.

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In *Cook v. Leonard,* the provisions of the statute considered were expressed in similar terms.

In *Agnew v. Jobson,* the action was brought against a justice of the peace who had made an order for the examination of the plaintiff's person and against the police inspector who had taken her in custody for such purpose, it being contended that there was no authority, statutory or otherwise, authorizing the making of such order. The defence was that no notice of the action had been given under the provisions of 11 & 12 Vict., c. 44, described as an Act to protect justices from vexatious actions "for acts done by them in the execution of their office", unless a specified notice was given and the action brought within six months. Lopes J. held that the statute was inapplicable since:

> There was a total absence of any authority to do the act, and although he acted *bona fide,* believing he had authority, there was nothing on which to ground the belief, no knowledge of any fact such a belief might be based on.

It is quite true that the judgment of the Court of Queen's Bench delivered by Blackburn J. in the *Selmes* case, of the judges of the Queen's Bench Division in *Cook v. Leonard,* and of Lopes J. in *Agnew v. Jobson* are not binding upon this Court. Since what was said by Lord Finlay and Lord Atkinson in *Newell v. Starkie* were statements made in the House of Lords and upon a statute the language of which differs from s. 24 of c. 47, it is, of course, not decisive of the matter. However, that is not to say that when the interpretation of the rule of construction in the *Interpretation Act* of Quebec which owes its origin to the common law of England, as expressed in *Heydon's* case, is the question, the opinions of the learned judges who have applied the same rule of construction in England are not entitled to great weight. To apply part of the language of Anglin J. in *Curley v. Latreille* which I have quoted, "the principles upon which the particular subject matter is dealt with are the same".

If it is contended that in construing statutes of the Province of Quebec to which s. 41 of the *Interpretation Act* applies we are to ignore the decisions of the House of Lords and of Courts of appeal in England where the same

rule of construction has been applied, the argument is ill-founded and should be rejected. Nothing said by either Anglin J. or Mignault J. in the case referred to supports any such contention.

For these reasons, it is my opinion that the appeal from the judgment of the Court of Appeal should be allowed as against the respondent Benoit and dismissed as against the respondents Nadeau and Forget without costs.

As to Benoit, without any lawful justification, he caused the arrest and imprisonment of the appellant and was responsible for the laying of the information and the prosecution which followed. The appellant was subjected to the ignominy of arrest and prosecution for the offence of distributing a seditious libel, of which offence Benoit knew from the outset she was innocent. She incurred liability to counsel who appeared on her behalf at the trial in the amount of $150. I would award damages against Benoit of $2,500 and costs throughout.

FAUTEUX J. (dissenting in part):—Le récit des faits invoqués contre chacun des officiers de la Sûreté provinciale poursuivis par l'appelante, soit les officiers Pelland, Nadeau, Forget et Benoît, apparaît aux autres raisons de jugement données en cette cause.

Il n'y a véritablement que le cas de l'officier Benoît qui doit faire l'objet de considérations particulières. En effet, le jugement de la Cour supérieure rejetant l'action contre Pelland, n'ayant pas été l'objet d'un appel, a force de chose jugée. Quant à Nadeau et Forget, je suis d'avis qu'il n'y a pas lieu d'intervenir pour modifier le jugement unanime de la Cour d'Appel[1] décidant, pour les raisons y mentionnées, qu'aucun des faits invoqués contre eux par l'appelante ne constitue une faute engendrant responsabilité.

Du fait que Benoît fit loger la dénonciation par Forget parce que l'appelante avait refusé une offre de libération conditionnée par la signature d'un document exonérant les officiers de toute responsabilité, la Cour en a déduit qu'il n'était pas raisonnable de penser que Benoît croyait en la culpabilité de l'appelante. Considérant, cependant, en droit, que les actions contre les officiers de la Sûreté provinciale

[1] [1958] Que. Q.B. 237.

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se prescrivent par six mois, aux termes de l'art. 24 du c. 47, S.R.Q. 1941, *Loi de la Sûreté provinciale et de la police des liqueurs,* et, en fait, qu'en prenant, pour computer ce délai,—en ce qui concerne tous les actes reprochés,—la date la plus favorable à l'appelante, soit celle de sa libération à l'enquête préliminaire, le bref d'assignation avait été signifié à Benoît plus de six mois après cette date, la Cour jugea que l'action contre Benoît était prescrite.

Il s'agit d'une action réclamant des dommages-intérêts, en matière délictuelle, contre un officier de la Sûreté provinciale. Manifestement ce sont les dispositions du *Code Civil* de la province de Québec qui doivent s'appliquer, sujet aux modifications y apportées par la loi spéciale régissant ces officiers.

On a prétendu qu'une action en dommages pour dénonciation calomnieuse doit être décidée suivant les principes régissant telles actions sous le régime de la Common Law. Ces principes sont concisément exposés comme suit dans Salmond On the Law of Torts, 10th ed., à la page 624:

> 10. *Malice.*—No action will lie for the institution of legal proceedings, however destitute of reasonable and probable cause, unless they are instituted maliciously—that is to say, from some wrongful motive. (*Williams v. Taylor* 1829, 6 Bing. p. 186). Malice and absence of reasonable and probable cause must unite in order to produce liability. So long as legal process is honestly used for its proper purpose, mere negligence or want of sound judgment in the use of it creates no liability; and, conversely, if there are reasonable grounds for the proceedings (for example, the probable guilt of an accused person) no impropriety of motive on the part of the person instituting these proceedings is in itself any ground of liability.

Telle n'est pas une expression exacte de la loi sous le *Code Civil* gouvernant dans la province de Québec. L'action en dommages est une action de droit privé. Suivant l'art. 1053 C.C., le fait dommageable donnant droit au recours peut avoir été commis avec l'intention de nuire et constituer alors le délit. Il est suffisant, cependant, qu'il constitue une faute d'imprudence, de négligence ou d'inhabilité pour constituer un quasi-délit et donner droit à réparation. En somme, il suffit pour donner ouverture à l'action en dommages, que le fait dommageable, imputable à la partie poursuivie, soit illicite. D'où il suit que si la dénonciation a été logée dans les conditions où la loi pénale autorise de

ce faire, elle ne peut constituer un acte illicite. Ces conditions sont prescrites au *Code Criminel* à l'art. 654 (ancien) et 439 (nouveau). Au temps de la dénonciation logée par Forget, sur les instructions et informations de Benoît, l'art. 654, alors en vigueur, se lisait comme suit:

> 654. Si quelqu'un croit, pour des motifs raisonnables ou plausibles, qu'une personne a commis un acte criminel visé par la présente loi, il peut porter plainte ou faire une dénonciation, par écrit, et sous serment, devant un magistrat ou juge de paix autorisé à émettre un mandat ou une sommation contre le prévenu au sujet de cette infraction.

Il appert cependant de ce texte que si, d'une part, la croyance en la culpabilité, basée sur des motifs raisonnables et plausibles, conditionne, sous le droit public, le droit de dénonciation, les motifs, d'autre part, qui animent et poussent à agir le dénonciateur qui satisfait, par ailleurs, aux conditions de l'article, sont étrangers au droit qu'il a de loger une dénonciation. Ces motifs, empreints ou non de malice au sens donné au mot sous la Common Law pour juger des actions en dommages pour dénonciation calomnieuse, n'ont aucune influence sur l'existence ou la non-existence du droit de dénonciation. Aussi bien, l'acte du dénonciateur, acte qui de sa nature est fatalement dommageable, se justifie, sous le droit public, sur la croyance en la culpabilité, basée sur des motifs raisonnables et plausibles, mais non sur l'absence de malice. Dans ces vues, il ne peut y avoir de conflit entre le droit civil de Québec relatif à l'action en dommages pour dénonciation calomnieuse et le droit public canadien fixant les conditions du droit de dénonciation. L'incidence de la malice n'étant pas retenue sous le droit public, le droit public ne peut être invoqué comme modifiant le droit privé, ou pour soutenir que le Parlement a considéré essentiel à la poursuite efficace du crime, que l'absence de malice soit *per se* un moyen absolu de défense dans une action au civil pour dénonciation calomnieuse. Assumant qu'une telle immunité au civil puisse être validement donnée par le Parlement, elle ne l'a pas été. On ne saurait davantage, mû par un désir d'uniformiser les lois en matière civile alors que, depuis le statut impérial de 1774, l'Acte de Québec, la loi sanctionne impérativement le principe de la non-uniformité en cette matière, appliquer des principes de la Common Law nettement en conflit avec ceux du *Code Civil*.

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dans l'interprétation de l'expression "en sa qualité d'officier". Au sens de la loi qui nous occupe, l'acte reproché sera réputé accompli par son auteur, "en sa qualité d'officier", s'il a été accompli en raison même du fait qu'il est officier, et non pour des motifs qui lui sont autrement personnels.

Concourant dans l'avis exprimé par le Juge de première instance et tous les membres de la Cour d'Appel, je n'ai aucun doute que tous les actes reprochés à Benoît ont été accomplis par lui en sa qualité d'officier.

On a enfin prétendu que la signification de l'action, dans le délai de six mois, aux autres défendeurs, avait interrompu la prescription quant à Benoît. Qu'il s'agisse de simple prescription ou de délai préfixe, cette prétention ne peut être retenue. Dans le premier cas, l'action n'étant pas fondée au mérite contre aucun des codéfendeurs de Benoît, ces derniers ne peuvent être considérés comme ses codébiteurs; les conditions pour interrompre la prescription ne sont donc pas présentes. Dans le second cas, la disposition n'admet pas d'interruption.

La décision de cette Cour dans *Chaput v. Romain*[1] n'est, pour les raisons indiquées par M. le Juge Taschereau, d'aucune application en cette cause. Quant à celle de *Beatty v. Kozak*[2], et les autres au même effet, elles ne sont également, en raison de l'absence du rôle de la bonne foi dans le statut applicable en la matière, d'aucune portée en l'espèce.

Je renverrais l'appel avec dépens.

ABBOTT J. (dissenting in part):—The facts and the relevant statutory provisions are set out in the reasons of other members of the Court and it is unnecessary for me to repeat them.

Of the three respondents, the Court below has held that two of them, Nadeau and Forget, committed no fault and are therefore not liable in damages to appellant. With that finding I am in agreement. The Court below has also held that although a valid cause of action existed against the respondent Benoit, that right of action had been extinguished by prescription under s. 24 of the *Provincial*

[1] [1955] S.C.R. 834, 114 C.C.C. 170, 1 D.L.R. (2d) 241.
[2] [1958] S.C.R. 177, 120 C.C.C. 1, 13 D.L.R. (2d) 1.

Police Act, R.S.Q. 1941, c. 47, before the present action was instituted. If the said section is applicable, it is clear that appellant's right of action was prescribed and in my view this question of prescription is the sole question at issue in this appeal.

A right of action in damages such as that asserted in the present action is a civil right and must, of course, be founded upon the law in force in Quebec where the acts causing the alleged damage were committed—in this case upon art. 1053 of the *Civil Code.*

Similarly the extinguishment of any such right of action by prescription is governed by the law of Quebec and unless s. 24 of the *Provincial Police Act* is applicable, appellant's right of action in damages for false arrest and malicious prosecution would have been extinguished by prescription on the expiry of two years under art. 2261 C.C. Extinctive prescription is one of the twelve modes of extinguishing an obligation mentioned in art. 1138 C.C. and in Quebec the short prescriptions (of which that provided for in art. 2261 C.C. is one) are something more than mere limitations of action which only bar the remedy without touching the obligation: art. 2267 C.C.

In my opinion the Court[1] below has properly held that the respondent Benoit was not entitled to avail himself of the special protections and the limitation of action provided for under the *Magistrate's Protection Act*, R.S.Q. 1941, c. 18, since he was not acting in good faith as required by that statute and as held by this Court in *Chaput v. Romain*[2]. In *Beatty and Mackie v. Kozak*[3], (an appeal from Saskatchewan where the interpretation and effect of certain sections in the *Mental Hygiene Act* of that Province, R.S.S. 1953, c. 309, were in issue) this Court decided that in order to benefit from the special protections and the limitation of action provided for under that statute, a person claiming such benefit must show that he acted in good faith. The test of good faith was held to be a *bona fide* belief in facts which if they existed, would have justified the action taken.

[1] [1958] Que. Q.B. 237.
[2] [1955] S.C.R. 834, 114 C.C.C. 170, 1 D.L.R. (2d) 241.
[3] [1958] S.C.R. 177, 120 C.C.C. 1, 13 D.L.R. (2d) 1.

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Both the *Chaput* case and the *Beatty* case are of assistance in the interpretation of statutory provisions of the kind referred to, but they are not conclusive as to the interpretation and effect of s. 24 of the *Provincial Police Act*. That section is framed in completely different language which is more specific and more absolute than that used in the sections of *Mental Hygiene Act* and the *Magistrate's Privilege Act* which were considered by this Court. Moreover, s. 36 of the *Provincial Police Act* provides that in case of incompatibility, the provisions of that Act shall prevail over those of every other general law or special Act. Section 24 provides that

> every action against an officer of the police force by reason of an act done by him or a complaint lodged by him *in his official capacity* . . . shall be prescribed by six months.

The French text reads as follows:

> Toute action dirigée contre un officier de la Sûreté par suite d'un acte qu'il a accompli ou d'une plainte qu'il a portée en *cette qualité d'officier* . . . se prescrit par six mois.

In my view that language is clear and it has the effect of substituting a prescriptive period of six months for the period of two years provided for in art. 2261 C.C. That prescriptive period of two years applies whether or not the person against whom a claim in damages for false arrest is made, has acted in good faith and with reasonable and probable cause. I am unable to appreciate, therefore, upon what ground the prescriptive period of six months, provided for in s. 24, can be limited to those cases in which a police officer has acted in good faith and with reasonable and probable cause.

As to the effect to be given to the words "in his official capacity", it does not seem to me that it can be seriously suggested that in arresting the appellant and causing a complaint to be lodged against her, Benoit was acting in any other capacity than that of a provincial police officer.

As has been pointed out by the learned authors of Halsbury, 3rd ed., vol. 7, at p. 253, Crown servants may

> be sued and made personally liable for tortious or criminal acts committed by them in their official capacity without showing malice or want of probable cause, unless that is of the essence of the tort or crime.

and they refer to *Brasyer v. MacLean*[1], a decision of the Judicial Committee on an appeal from a decision of the Supreme Court of New South Wales in which a sheriff was held liable in damages for false arrest which had resulted from a false return of rescue made by the said sheriff upon a writ of *capias ad respondendum*.

In placing the appellant under arrest and in causing the complaint to be lodged against her, Benoit, in my opinion, was acting "in his official capacity" as an officer of the Provincial Police although such actions were to his knowledge completely unjustified.

Whether it be desirable that in the case of a provincial police officer the Legislature should shorten to a period of six months the prescriptive period of two years provided under the general law for an action of this kind, is not for me to say. In my opinion it has done so.

I would dismiss the appeal with costs.

Appeal allowed with costs, Taschereau, Fauteux and Abbott JJ. dissenting in part.

Solicitor for the plaintiff, appellant: W. Glen How, Toronto.

Solicitor for the defendants, respondents: Gustave Monette, Montreal.