

action for malicious prosecution is not bound to prove the plaintiff's guilt as charged in the criminal proceedings, still he is at liberty to do so if it be necessary to establish reasonable and probable cause; but as it appeared that notwithstanding the ruling the defendant was not precluded from adducing such evidence, the ruling was of no importance.

*Pegley* for plaintiff.

The defendant in person.

FERGUSON, J.]

TRUSTEES OF SCHOOL SECTION 24 OF TOWNSHIP OF BURFORD *v.* TOWNSHIP OF BURFORD AND TRUSTEES OF SCHOOL SECTION 23 OF BURFORD.

*Public schools—Formation of school sections—Map of—Evidence of—Land belonging to one school section assessed to another section—Rolls finally passed—Claim for moneys paid out of municipal loan fund.*

As evidence of the formation of school sections in a township by the municipal council thereof, a rough sketch or map designated "school section map, township of B.," but without signature, seal or date, was produced from the proper custody, and had the appearance of being very old, and there was no other map to be found. That in 1888, before this action was commenced, which was in 1889, but after the commencement of the agitation which gave rise thereto, the municipal council passed a by-law "to make alterations in school section map," and authorized the clerk to correct said school section map, etc.; and that when any difficulty arose as to boundaries of school sections recourse was had, at least in some instances, to this map.

*Held*, that this map must be assumed to be drawn in pursuance of the statute, and therefore afforded evidence of the original division of the township into school sections by the township council.

School section 24 complained that for the years 1883 to 1887 certain lots which formed part of that section had not been assessed therefor, but had been assessed as part of school section 23, and the taxes therein levied and paid over to section 23, and that section 24 was entitled to be paid these taxes either by the township or by section 23. In each of these years, so far as regards these matters, the rolls

were finally passed by the Court of Revision and certified by the clerk, etc.

*Held*, that school section 24 could not now maintain such claim, for they were bound by sec. 57 of R.S.O., c. 180 (1877), under which the rolls as finally passed by the Court of Revision, etc., were valid and binding on "all parties concerned," school section 24 coming within their designation, but apparently they were not entitled to the notice provided for by sec. 41.

School section 24 also claimed that by reason of certain lots claimed to belong to that section being assessed as part of school section 23, section 24 did not get its proper share of the interest of the money paid the township to equalize townships that had not borrowed from the municipal loan fund, which was distributed according to the population of the school section. The contention of section 24 being to a great extent erroneous, and the amount which they might be entitled to infinitesimally small, and the amount having been distributed in good faith, the Court refused to interfere.

*Bowlby* for the plaintiffs.

*Harley* for the Township of Burford.

*Wilkes* for school section 23.

Divl Ct.]

[Dec. 21, 1889.

MASON *v.* NORFOLK RY. CO.

*Agreement for sale of land—Obstruction to land by railway company—Rights of vendor and purchaser as to damages.*

The plaintiff was in possession of certain land under an oral agreement of purchase at \$450, payable in bricks, deliverable as demanded, of which \$100 worth had been demanded and delivered. The defendants, without making any compensation therefor, built their railway in front of the land so as to interfere with the plaintiff's right of access, whereupon this action was brought, and damages recovered by the plaintiff, he being treated as entitled to the whole estate in the land, and the injury permanently reducing the value of the land.

*Held*, that the company were trespassers, and could not justify the acts complained of under the statute; that the trespass was a continuing one, and fresh damages accrued, and a new right of action arose every day; that substantial damages were recoverable for the disturbance of the possession, but, in a first action, only nominal damages for the injury to the reversion;