dismissal by the magistrate on a question of identity would not amount to much; and under any circumstances the action of a magistrate or of a grand jury would only be a presumption that the charge was unfounded; not that it was brought through malice. There are, however, other circumstances to be considered in this case. I am strongly of opinion that, though the judgment on the *requête civile* shows that there was evidence of a legal service, the plaintiff has been perfectly honest in setting up that there was not, and in swearing to the fact. It is a very suspicious circumstance as to the time at which this accusation was brought, that the petition *en nullité de décret* had been filed, after Bolduc had got this property for $55, and I find in a work published last year, and highly spoken of in the reviews, "Patterson on the Liberty of the Subject," something that bears very closely on this subject. Whether the charge of perjury, or the facts on which it rested, were true or honestly believed to be true is a question of fact no doubt; but whether assuming them to be true, they ought to have reasonably induced the defendants to prosecute, in other words, whether they amounted to reasonable or probable cause, is a question of law for the judge. This is an old settled rule, and the leading cases establishing it are found in all treatises on this subject. They will be found too, at page 202, of the second volume of the book I have just mentioned, but as this was never doubted, I do not now particularly refer to those cases. What I wanted to refer to especially was at page 201 of the same volume: "Though malice may be inferred from want of reasonable and probable cause, the latter cannot be inferred from malice. Both are to be inferred from the acts, conduct and expressions of the defendant, as for example, the existence of a collateral motive in the defendant, such as a resolution to stop the plaintiff's mouth." Here I am persuaded there was a resolution to stop the plaintiff's mouth, or at all events, to stop his proceeding *en nullité de décret*, by this man Bolduc, who got his property for a mere song. I do not cite this book as authority on anything new, nor even as authority at all, but as reasonable observation on existing law, which in this instance and others is expressly given in a note. I find, too, on the same page, another apposite observation: "It may be inferred from the fact that the prosecution was instituted for a collateral purpose, such as for frightening others, or enforcing payment of a debt." I cannot shut my eyes to the fact that Mr. Charles Thibault in his deposition admits that the plaintiff may not have understood that the bailiff served an action on him, and it appears certain that Mr. Charles Thibault had possession of the copy said to have been served; and though he is not a defendant now, I cannot disconnect him from the others as far as his acts affect them. The circumstances of the arrest, and remands, and expenses the plaintiff was put to must be taken into consideration, and I feel obliged to give him damages which I fix at $50, and costs of action brought. This man is proved to bear a most excellent character, and he has been treated to say the least, with great harshness. I am persuaded from the facts of the case that his affidavit was true as far as his knowledge went, and there was no perjury, though technically no doubt the judgment on the *requête* held rightly that the service was sufficient.

Duhamel & Co. for plaintiff.
Thibault & Co. for defendant.

KENAHAN v. GERIKEN.

Malicious Prosecution—Conviction.

Malice and want of probable cause are conclusively disproved by the conviction of the plaintiff.

JOHNSON, J. This is an action for a malicious prosecution and arrest; and I may say at once, that considering the way in which the plaintiff has been treated by the law, and by those who are to some extent the ministers of the law, I regret very much being obliged to dismiss it. The plaintiff was a carter and was stationed in front of the St. Lawrence Hall by his comrades under circumstances that the defendant must have known very well; yet he thought proper, as he had strictly a right to do, no doubt, to prosecute him for loitering there as a vagrant, and he was convicted. The point of the case is very shortly come at. Is there such a thing as the possibility of proof of want of reasonable and probable cause, and of malice in the face of a conviction. I thought not at the trial, and I think so still. It was urged that in a case of *Forte* v. *The City of Montreal*, confirmed in Review two or three terms ago, the judges had held that in such a case they could incidentally