

Held, so far as the action rested upon the liability of the company through S. there was no liability, for that S. was merely a fellow servant of the plaintiff.

Held, however, that an action might be sustained on proof of negligence of the company in not furnishing proper appliances for the quarrying operations.

Elgin Myers and Fish for the plaintiff.

E. F. B. Johnston, Q.C. and *Geo. Ross* for the defendants.

Div'l Court.]

KELLY v. BARTON.
KELLY v. ARCHIBALD.

[May 27.

Arrest—Notice of action—Malice—Reasonable and probable cause—R.S.O., c. 73.

The object of the R.S.O., c. 73, the "Act to protect justices of the peace and others from vexatious actions," is for the protection of those fulfilling a public duty, even though in the performance thereof they may act irregularly or erroneously, and notice of action in such case must allege that the acts were done maliciously, and without reasonable and probable cause; but where the officer voluntarily does something not imposed on him in the discharge of any public duty, the notice need not contain these allegations.

A breach of a city by-law for driving an omnibus without the license required thereby does not justify the summary arrest of the offender, even though the officer may have believed that he was acting legally and in the discharge of his official duty.

A resolution of the Executive Committee of the City Council authorizing the City Solicitor to defend actions brought against police officers for their alleged illegal acts does not constitute a ratification thereof by the city.

McCarthy, Q.C., and *C. R. W. Biggar, Q.C.*, for the plaintiff.

W. R. Riddell for the defendant Barton.

Fullerton, Q.C., for the City of Toronto.

MEREDITH, C.J.]

UNION SCHOOLS v. LOCKHART.

[July 15.

Public schools—Education—Union school sections—Alteration of—54 Vict., c. 55, ss. 87 (s.ss. 1, 11), 96 (Ont.).

By s.s. 1 of s. 87 of the above Act, it is enacted that, "on the joint petition of five ratepayers from each of the municipalities concerned, to their respective municipal councils, asking for the formation, alteration, or dissolution of a union school section," etc., certain proceedings may be taken.

Held, that a petition, to be valid under this subsection, must be the joint petition of five ratepayers from each municipality, in the case of each petition; that is to say, in each petition presented to each council five ratepayers from each municipality must join.

An award based upon a petition not conforming to the above requirements is void *ab initio*, and is not within the purview of section 96 of the said Act.