

largely reduced by such contestation, that the costs should not be, at least, first chargeable against the dividends of the opposing creditors, but it has to be borne in mind that his claim is not reduced; that still remains, except in so far as reduced by the dividend, recoverable just as it always was from the debtor.

*Aylesworth, Q.C., and Hardy for the plaintiff.*

*Snow for the defendant, the assignee.*

Div'l Court.]

[June 1.

O'HARA v. DOUGHERTY.

*Evidence—Action for malicious prosecution—Proof of acquittal—Production of original records by clerk—Certified copy.*

In an action for malicious prosecution, the plaintiff sought to prove his acquittal, before the County Judge's Criminal Court of the County of Haldimand, of a charge of misdemeanour, in respect to which charge this action was brought, by means of the production of the original record signed by the County Judge, and produced and verified by the clerk of the peace and Crown Attorney of Haldimand, in whose custody it was, or else by being allowed to put in a copy thereof, certified by the said County Crown Attorney.

*Held*, reversing the decision of MACMAHON, J., at the trial, that the evidence should have been admitted in either of the above two forms, and judgment dismissing the action set aside, and a new trial ordered.

*Per* ROBERTSON, J.: In cases of misdemeanour, the defendant is entitled to a copy of the record as of right.

*Carscallan for the plaintiff.*

*Howard for the defendant.*

Div'l Court.]

[June 1.

WILSON v. TENNANT.

*Malicious prosecution—Charge of theft—Reasonable and probable cause for charge as to some articles only—Misdirection.*

In an action for malicious prosecution of a charge of theft of several articles, the trial judge held that there was no reasonable and probable cause for charging the theft of some of the articles, and withdrew the case as to them from the jury, but held otherwise as to the charge of theft of the other articles, and directed the jury that the fact that there was reasonable and probable cause to charge the theft of some of the articles bore only upon the question of damages, and left the case to the jury, who found a verdict for the plaintiff.

*Held*, that there was no misdirection, and motion dismissed with costs.

*Johnstone v. Sutton*, 1 T.R. 547, considered and distinguished.

*Clute, Q.C., for the defendant.*

*Parkes for the plaintiff.*