Rose, J.] [February 25.

SCOTT v. TOWN OF LISTOWEL.

LIVINGSTON v. TOWN OF LISTOWEL.

Assessment—Appeal—Service of notice—Fine—R. S. O. ch. 180, secs. 56, 59.

R. S. O. ch. 180, sec. 59, regulating appeals to the county judge from the Court of Revision as to the assessment of property, provides (sub-sec. 2) that the person appealing shall serve upon the clerk of the municipality within five days after the date limited by the Act for closing the Court of Revision a written notice of his intention to appeal (sub-sec. 3); that the judge shall notify the clerk of the day he appoints for hearing appeals; and (sub-sec. 4) that the clerk shall thereupon give notice to all the parties appealed against. Sec. 56, sub-sec. 19, provides that all the duties of the Court of Revision shall be completed, and the rolls finally revised, before the 1st day of July in each year.

The Court of Revision heard the appeals in question on the 10th June, 1886, and rendered judgment on the following day. Notices of appeal dated the 15th June, 1886, were served upon the clerk on the 19th; the Court of Revision sat until the 5th July; on the 15th July the clerk notified the judge that notice had been given of these appeals; and on the 16th July the judge notified the clerk of the day that he had appointed for hearing the appeals, and the clerk notified the parties.

Held, that the limitation in sec. 59, sub-sec. 2, should be construed to mean that notice of appeal should not be served after the expiration of five days from the closing of the Court of Revision; and also that the service in this case was within the five days, as the notices were in the hands of the clerk during the five days, and were acted upon by him; and further, that service prior to the expiry of the five days was good service.

Shepley, for the plaintiffs.

W. H. P. Clement, for the defendants.

Ferguson, J.] [March 10.

VANDERVOORT v. YOUKER.

Demurrer—Averment of malice—Inferred malice—Reasonable and probable cause of belief of larger amount due.

Y. issued a capias before judgment against V., and had him arrested. After the arrest V. tendered $90 in full of Y.'s claim, which was refused as not being sufficient. Y. then proceeded with his action, but failed to obtain a judgment for more than $90.

In an action by V. against Y., in which no malice was alleged, but claiming damages for wrongful arrest.

Held, on demurrer, that malice would not be inferred, because, so far as appeared from the pleadings, Y. had reasonable and probable cause for thinking that V. owed him more than $90, and as malice was not alleged the demurrer must be allowed with costs; leave to amend given.

Aylesworth, for the demurrer.

Lash, Q.C., contra.

C. P. Div. Ct.] [March 12.

BETTS v. GRAND TRUNK RY. CO.

Discovery—Production of documents—Railway accident—Report and evidence on investigation.

The plaintiff, in an action for damages for injuries sustained in a railway accident, sought to compel the defendants to produce a certain report of an investigation held by the defendants immediately after the accident, and the notes of evidence taken at the investigation. These documents, according to the evidence of H., an officer of the defendants, who was examined for discovery in the action, were not obtained for the solicitor of the defendants, nor for the purpose of being laid before him for advice, nor in view of any impending or threatened litigation, nor after litigation commenced, but "for the purpose of the management of the line;" "for our own purposes; it was not intended for a purpose of this kind" (*i.e.*, for use in legal proceedings). In answer to the question whether the defendants' solicitor was present at the investigation, H. said, "No; it would be entirely between the officers of the company." The affidavit of the