Ferguson, J.] [June 30.

HILL v. MACAULAY.

Assessment and taxes—Invalid assessment—Tax sale.

Where the plaintiff's land was assessed as one with that of another proprietor adjoining it for several years, and was finally sold for the arrears of taxes so charged.

Held, that the assessment was bad and the sale void.

Held, also, that the case did not come within R. S. O. cap. 180, sec. 118, which provides that the treasurer may, on receiving satisfactory proof, that any parcel of land on which taxes are due has been subdivided, he may receive the proportionate amount of tax chargeable upon any of the subdivisions and leave the other subdivision chargeable with the remainder, and that he may divide any parcel returned as in arrear into as many parts as the necessities of the case may require.

Dougall, Q.C., and *Holton*, for the plaintiff.

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

COMMON PLEAS DIVISION.

MCKAY v. CUMMINGS.

Malicious arrest—General issue by statute—Necessity of pleading—Evidence.

In an action for malicious arrest it appeared that the plaintiff, a guest at an hotel in St. Catharines, on awakening in the morning at about six o'clock, discovered that he had been robbed of his gold watch and chain and about $50 in money. He sent for the chief of police, and on his arrival met him on the street outside the hotel, informed him of his loss, and requested him to search the house, which the defendant refused to do without a search warrant. An altercation then took place which ended in defendant calling plaintiff an impostor, and arresting him and taking him to the police station, when, after being detained for a few minutes, he was discharged. The defendant attempted to justify his action by stating that he arrested plaintiff for breach of one of the city's by-laws in swearing on the street, but the evidence failed to establish that this was the cause. The jury found a general verdict for the plaintiff with $200 damages. They also specially found in answer to a question to that effect put to them, "that the defendant honestly believed that his duty as constable called upon him to make the arrest." The learned judge thereupon entered a nonsuit holding that defendant should have received notice of action. The general issue by statute, R. S. O. ch. 73, was not pleaded, and the statement of defence was not framed so as to enable defendant to avail himself of it, and there was no evidence on which the special finding of the jury could be supported.

Under these circumstances the nonsuit was set aside and judgment entered for the plaintiff with the $200, the damages assessed.

Osler, Q.C., for the plaintiff.

J. K. Kerr, Q.C., for the defendant.

SUTHERLAND v. COX, ET AL.

Brokers—Agreement to carry stock on margin—Failure to purchase stock—Right to recover margin—Custom.

The defendants assumed a contract made by the plaintiff with one F., a broker, under which F. was to carry 500 shares of Federal Bank stock on margin for the plaintiff for a definite time. The defendants received from F. $3,440, margin paid to him by plaintiff, but it appeared that defendants never had and did not carry any stock for the plaintiff, but was, as it is termed, "short" on this particular stock.

Held, that the plaintiff was entitled to recover from the defendants the amount so paid over to them as margin.

The custom of brokers commented on.

D. E. Thomson and *Henderson*, for the plaintiff.

J. K. Kerr, Q.C., and *Lash*, Q.C., for the defendants.

MCKERSEE v. MCLEAN.

Seduction—Service—Right to maintain action.

In an action of seduction it appeared that the girl seduced was the grandniece of the plaintiff. On her father and mother's death, which occurred when she was about twelve years old, she went to live with the plaintiff, and from thence went out to service to various persons, and at the time of the seduction and for three years previously was in service with one C., retaining the wages she earned for her own use. While in C.'s service she was seduced