3. Or did plaintiff fall off while endeavouring to prevent defendant from getting possession of the lines? A. No.

4. Was plaintiff interfering with or preventing the market place from being used for the purpose for which it was designed? A. No.

5. Did plaintiff, after having been ordered by defendant to desist from watering, continue watering and refuse to desist? No.

6. Did defendant use more violence towards plaintiff than was reasonably necessary to prevent plaintiff from incumbering the market place and from wetting the by-standers? A. Yes.

7. Was the use of the market place for the purpose for which it was being used a reasonable one? A. No.

8. Was plaintiff interfering with or preventing the market place from being used for the purpose for which it was actually being used? A. Yes.

9. Did defendant act maliciously and without reasonable and probable cause in doing what he did? A. Not maliciously.

10. Damages? A. $300 for the excess.

The trial Judge found upon these answers that defendant had acted without reasonable and probable cause and entered judgment for plaintiff for $300 and costs.

The motion was heard by FALCONBRIDGE, C.J., STREET, J., IDINGTON, J.

F. MacKelcan, K.C., and G. Lynch-Staunton, K.C., for defendant.

H. Carscallen, K.C., for plaintiff.

STREET, J.—It appears clear that the constable in what he did here, whatever it was, was acting virtute officii, as it is expressed by Lord Kenyon in Alcock v. Andrews, 1 Esp. 542 n. He was on duty at the market square, and was directed by the clerk of the market, who had charge of the premises for the city, to make plaintiff move his watering cart from a position in which it appeared to be creating an obstruction and a danger. The finding of the jury is that plaintiff was in fact interfering with the use of the market place for the purpose for which it was being used. It was while engaged in the effort to make plaintiff move on his watering cart, in pursuance of the order of the market clerk, that defendant caused the injuries complained of. It does