upon an affidavit of claim, procured the issue of a writ attaching a debt due to the plaintiff. (*h*)

(*c*). *Materiality of the fact that the proceedings were or were not ex parte*—Both in the case of the exhibiting of articles of the peace and in the case of an application for sureties of the peace or recognizances for good behaviour, the charge is not susceptible of being controverted, and the accused has, therefore, no opportunity of getting a determination in his favour. The magistrates are bound to act upon the statement made to them, and do not exercise any judicial functions at all. Under such circumstances the ordinary rule is not applicable, that the plaintiff must allege and prove that the procedure which he alleges to have been maliciously taken terminated in his favour. (*i*)

The ex parte character of the proceedings, however, is not regarded as a decisive differentiating factor in all cases. "Under the old law," [i.e., as it prevailed in England prior to the abolition of arrest for debt on mesne process], "you could not," remarked Cockburn, C.J., in *Parton* v. *Hill* (*j*) during the argument of counsel, "have brought an action for maliciously holding to bail without alleging the termination of the action favourable to the plaintiff; yet that was an ex parte proceeding, and the affidavits could not be contradicted."

18. Action not maintainable, unless the previous suit was terminated in the plaintiff's favour—A pendant to the general rule that a party cannot sue for a malicious arrest or prosecution without shewing in his declaration that the proceeding complained of was terminated, is that the action does not lie unless the termination

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(*h*) *Parton* v. *Hill* (1864) 12 W.R. 753 (see especially the opinion of Blackburn, J.)

(*i*) *Steward* v. *Grommett* (1859) 7 C.B.N.S. 191. Compare remarks of Blackburn, J., in *Parton* v. *Hill* (1864) 12 W.R. 753. So, also, one of the grounds upon which the majority of the court in *Erickson* v. *Brand*, sub-sec. (a), supra, decided in favour of the right of action, and the only ground upon which, as noted, Barton, J, dissented, was that the arrest was, ex parte, not directly controvertible as a part of the same proceeding. In order to enable the plaintiff to maintain an action for maliciously and without probable cause suing out a writ of extent after he had been found by an ex parte inquisition to be indebted to the Crown, all that the law requires is that the writ of extent should be traced to its close, as by a supersedeas. The fact that the declaration shews that the verdict of the jury and the inquisition remain still unreversed and in full force does not necessarily negative the want of reasonable and probable cause, or forbid the court to infer the existence of malice: *Craig* v. *Hassell* (1843) 4 Q.B. 481.

(*j*) (1864) 12 W.R. 753.