the wheel in an unlocked drive-shed, where it had been seen by the defendant.

A few days after this, the defendant met the plaintiff, said he had seen the bicycle, and, upon being asked by the plaintiff why he didn't take the bicycle, he answered, "I did not like to take it." The defendant asked the plaintiff to bring down the wheel in his cab; the plaintiff said he did not think he could get it into his cab; and the defendant said, "Try, and, if you can't, I will go after it." The wheel remained in the plaintiff's shed three or four days after this; then it seems to have been stolen, as it disappeared from the plaintiff's shed. The plaintiff supposed the defendant had it, and did not know any thing different till the defendant telephoned asking where it was. The defendant had sent a boy for it, but the boy had not found it, and later he sent another boy, who reported that it had gone that morning at 5 o'clock.

The defendant then went to the magistrate and consulted him; told him the circumstances and all the stories he had heard (as he says) and was advised by the magistrate to do what he did. What he did was to lay an information against the plaintiff for stealing the bicycle on the 27th May—this information was laid on the 29th June.

It is not true that the defendant told the magistrate everything; for he had been told that the bicycle was at one Ferguson's livery stable, where he in fact did afterwards find it.

The magistrate issued a summons against the plaintiff—and upon the hearing dismissed the charge.

This action for malicious prosecution followed. . . . The learned County Court Judge left only the question of damages to the jury; and determined that there was an absence of reasonable and probable cause. The jury found damage $15; and the learned County Court Judge directed judgment to be entered for that sum.

Upon an appeal to this Court, it was at once ruled that the verdict could not stand; as the jury must find on malice—absence of reasonable and probable cause is not in itself malice, however cogent evident it may be: Winfield v. Kean, 1 O.R. 193, and cases cited.

The parties then agreed that this Court should decide the whole case upon the evidence already in.

The learned County Court Judge has found want of reasonable and probable cause; and I agree with him.

The defendant cannot protect himself behind the magistrate's advice—if for no other reason than that he did not make