

ROSENFELD v. BERNSTEIN

**Responsibility—Malicious prosecution—Damages—
Evidence—Reasonable and probable cause—C.C.
art. 1053.**

1. An action in damages for malicious prosecution cannot be maintained unless the plaintiff establishes that the arrest he complains of, was made through malice and without reasonable and probable cause.

2. A person employed as a carter, in a furniture store, to deliver the goods, who clandestinely, without the authority and the knowledge of his employer, sells a stove, deliver it and endeavors to collect the money without reporting the sale, acts irregularly and gives a good reason to his employer to suspect him, and a reasonable and probable cause to have him arrested for stealing. If this carter is liberated, he has no recourse in damages against his employer.

The judgment of the Superior Court is reversed. It was rendered by Mr. Justice Monet, on January 29, 1916.

The plaintiff was a carter employed by the defendant, a furniture dealer, for the delivery of his goods. Without any authority and outside of defendant's knowledge, and clandestinely, he sold a stove for \$5, delivered it, never reported the sale to his patron, nor made any entry in the books, and endeavored several times to collect the money.

Archibald, Acting Chief Justice, Martineau and Lane, JJ.—
Court of Review.—No. 1200.—Montreal, May 28, 1917.—J. A.
E. Dion, attorney for plaintiff.—Tétreau and Jacobs, attor-
neys for defendant.