(*b*) *Opinion of jury on previous trial*—As the inquiry in an action for malicious prosecution and the investigation on the trial of the criminal charge are not *ad idem*, an expression of opinion by the jury which acquitted the plaintiff that the evidence before them was insufficient, or the charge malicious, is not admissible in behalf of the plaintiff in his suit for damages. *Non constat*, but that the defendant may then be in a position to adduce evidence of reasonable and probable cause, which was not laid before the other jury. (*j*) So a verdict for the party who was defendant in the original action, and between the time when the plaintiff in the second action was arrested on a charge of being about to leave the country and the time when the latter action was tried, is not admissible in the second action for the purpose of shewing want of probable cause. (*k*)

(*b*) *Opinion of members of the legal profession, how far a protection*—The materiality of the fact that the defendant consulted or omitted to consult a professional adviser should, properly speaking, be decided with reference to the consideration that the use of legal process wears a completely different aspect according as the disputable point upon which the existence of probable cause depends is one of law or of fact,—one which only a person who has a legal education is competent to determine, or one upon which any person of reasonable intelligence is capable of forming a sound judgment.

In the former case, upon a principle analogous to that noticed in the sub-section (a), supra, seems to justify the conclusion that if the justifiability of a suit turns upon a question of law, the opinion of a barrister would, except, perhaps, under the extraordinary circumstances there referred to, furnish a complete defence to the action. Thus, where the questions upon which the justifiability of an arrest depends are whether a foreign government is bound by the contracts of its agent, and whether such agent is personally liable, a bona fide belief, founded upon the opinion of counsel, that a party has a good cause of action when, in fact, he has none, is sufficient to shew that he had a probable cause of action. (*l*)

(*j*) *Hibberd* v. *Charles* (1860) 2 F. & F. 126, per Keating, J.

(*k*) *Daly* v. *Leamy* (1856) 5 U.C.C.P. 374.

(*l*) *Ravenga* v. *Mackintosh* (1824) 2 B. & C. 693, per Bayley, J.,—Holroyd, J., declining to pronounce an opinion on this point. Compare *Martin* v. *Hutchinson*