

after notice given to the adverse party of production of bill done conformably to the tariff.

"The only penalty which, according to my mind, the defendants had to pay when they discontinued their suit, was the taxed costs. It was the duty of the party, when the bill was taxed, to include all legitimate disbursements, and plaintiff does not allege anything in his action to justify him in claiming from the defendants any other costs than those mentioned in the Code of Civil Procedure. There was nothing special or out of the ordinary in the case taken by the present defendants against the present plaintiff. It was an action for libel, and, after certain witnesses had been examined and after one or two adjournments, the case was discontinued with costs, and these costs, in my opinion, have been paid. The present plaintiff cannot claim from the defendants any additional disbursements or the counsel fee of \$200 which he claims. I am, therefore, of opinion that plaintiff, as regards the disbursements and counsel fee, must fail.

"As to the second point, viz.: that, in order to succeed in his action in damages resulting from the alleged libel contained in the present defendants' declaration, the plaintiff was bound to prove malice and absence of probable cause on the part of the present defendants. As a matter of fact, in his declaration there is no allegation of malice or absence of probable cause, and, therefore, present plaintiff could not make proof on this head in the absence of such allegation. In the present case, the defendants did not act maliciously when they brought their action against the present plaintiff. The allegations of defendants' action against the present plaintiff, complained of by him in the present suit, were made in good faith and were pertinent to the litigation, and the facts disclosed and proved in the present case, in my opinion, that the present defendants