is brought to recover for wrongfully putting the machinery of the law in motion for the ulterior purpose of extorting from the plaintiff property to which the defendant had no colour of title, the plaintiff being arrested for a debt not yet due, and held to bail, it is not necessary to prove either that the former suit is terminated or that it was instituted without reasonable or probable cause (*f*).

In an action for maliciously and without reasonable or probable cause suing out a ca. sa. upon a partially satisfied judgment, securing the detention of the plaintiff by indorsing it for a larger sum than was really due, the fact that the plaintiff fails to show on the face of his declaration that he had been discharged from custody by order of the Court or a judge does not render it bad, on the ground that such omission is inconsistent with a want of reasonable and probable cause, and shews that the former proceedings had not terminated in his favour. Willes, J., pointed out that the general rule as to the necessity of establishing such a termination could have no application to a case in which the complaint was not that any undetermined proceeding was unjustly instituted, but that the defendant had maliciously employed the process of the court in a terminated suit, in having, by means of a regular writ of execution, extorted money which he knew had been already paid, and was no longer due on the judgment. The whole force of the defendant's argument rested upon the assumption that the order of a court or judge for the plaintiff's discharge was the only means of legally determining the former proceedings, by ascertaining the illegality of the arrest complained of; whereas the true view of the matter was that this illegality altogether depended on the amount for which the arrest was made being greater than the sum due—a fact which could only be decided conclusively between the parties by the verdict of a jury. The question whether or not there was probable cause could not be affected by an order for the discharge of the plaintiff, for a court, although, on an application for a discharge from custody, it would look at affidavits of the facts for the purpose of informing its conscience in the exercise of its equitable jurisdiction, did not, by granting or refusing the order for a discharge, necessarily decide, or affect to decide, any disputed question of fact, so as to preclude the parties from having that fact subsequently ascertained by the verdict of a jury. (*g*) Compare *Erickson* v. *Brand*, cited in sub-sec. (a) supra.

On the other hand, the termination of the suit must be averred, where the proceeding is one taken regularly in the course of a suit for the purpose of effecting its very object, or where the defendant,

(*f*) *Grainger* v. *Hill* (1838) 4 Bing. N.C. 212.

(*g*) *Gilding* v. *Eyre* (1861) 10 C.B.N.S. 592.