

The reason for that conclusion being reached is, that the only damage which the person complaining suffers will be compensated for by the costs which may be awarded to him.

The law is stated in the last edition of Pollock on Torts, p. 317, in this passage: "Generally speaking, it is not an actionable wrong to institute civil proceedings without reasonable and probable cause, even if malice be proved. For, in contemplation of law, the defendant who is unreasonably sued is sufficiently indemnified by a judgment in his favour which gives him his costs against the plaintiff."

Then, in the case of Quartz Hill Gold Mining Co. v. Eyre, 11 Q.B.D. 674, Lord Justice Bowen, at p. 689, applying the test which he speaks of as to the three heads of damage referred to by Holt, C.J., in *Savile v. Roberts*, 1 Ld. Raym. 374, at p. 378, states the law in this way: "To apply this test to any action that can be conceived under our present mode of procedure and under our present law, it seems to me that no mere bringing of an action, although it is brought maliciously and without reasonable or probable cause, will give rise to an action for malicious prosecution. In no action, at all events in none of the ordinary kind, not even in those based upon fraud where there are scandalous allegations in the pleadings, is damage to a man's fair fame the necessary and natural consequences of bringing the action. Incidentally, matters connected with the action, such as the publication of the proceedings in the action, may do a man an injury, but the bringing of the action is of itself no injury to him. When the action is tried in public, his fair fame will be cleared, if it deserves to be cleared; if the action is not tried, his fair fame cannot be assailed in any way by the bringing of the action."

Then the other rule of law, which is very well settled, and is dealt with in *Munster v. Lamb*, 11 Q.B.D. 588, and has been recently re-affirmed, is, that, no matter how scandalous a statement in a legal proceeding is, and no matter how false, it is essential for the administration of justice that it may be made with impunity; for otherwise justice could not properly be administered, if people were subject to being prosecuted for what they do in the course of a proceeding.

I think the statement of claim must be struck out, under Con. Rule 261, with costs.