

RECENT ENGLISH DECISIONS.

plaintiff to substantiate (*i. e.* in an action for malicious prosecution) in order to make out his claim, are not really in doubt; they have been decided over and over again, and have been decided for more than two hundred years; it is not enough for the plaintiff to show, in order to support the claim which he has made, that he was innocent of the charge upon which he was tried; he has to show that the prosecution was instituted against him by the defendants without any reasonable or probable cause, and with a malicious intention in the mind of the defendant, that is, not with the mere intention of carrying the law into effect, but with an intention which was wrongful in point of fact. It has been decided over and over again that all these points must be established by the plaintiff, and that the burden of each of them lies upon the plaintiff." This language is reiterated later on by Bowen, L.J., at p. 455. Then these propositions being laid down to start with, the point of the present decision of the Court of Appeal appears from the words of Brett, M.R., when he says:—"Now it seems to me that whenever a claim or defence consists of several necessary parts, he on whom the burden of proof of the whole rests, has also on him the burden of proof of each of these necessary parts. The burden of proof lies on the plaintiff to show that there was an absence of reasonable and probable cause; *if in order to show the absence of reasonable and probable cause there are minor questions which it is necessary to determine, it seems to me that the burden of proving each of these minor questions lies upon the plaintiff just as much as the burden of proving the whole does.*" Now this was the case in the action before the court. The innocence of the plaintiff, in respect of the matter for which, as he alleged, he had been maliciously prosecuted, was established, but in order to decide the question of whether the prosecutors had reasonable and probable cause for commencing the proceedings complained of, the judge found it necessary to ask the jury to find whether the

prosecutors had taken reasonable care to inform themselves of the true state of the case, and whether they honestly believed the case which they laid before the magistrates, before whom they had prosecuted the present plaintiff. The present decision establishes that the burden of proof as to these minor questions was on the plaintiff, as well as the burden of proof as to the larger questions to which they were subsidiary. In the language of Brett, M.R., "The burden of proof of satisfying a jury that there was a want of reasonable care, lies upon the plaintiff, because the proof of that want of reasonable care is a necessary part of the larger question, of which the burden of proof lies upon him, namely, that there was a want of reasonable and probable cause to institute the prosecution."

WHAT IS MISDIRECTION?

There is another passage in the judgment of the M. R. which it seems desirable to notice here. At p. 453 he observes:—"It is no misdirection not to tell the jury everything which might have been told them; there is no misdirection unless the judge has told them something wrong, or unless what he has told them would make wrong that which he has left them to understand. Non-direction merely is not misdirection, and those who allege misdirection must show that something wrong was said, or that something was said which would make wrong that which was left to be understood."

INNOCENCE PRIMA FACIE EVIDENCE OF WANT OF REASONABLE AND PROBABLE CAUSE.

Again in the judgment of Bowen, L.J., there is a passage which it would be departing from the scheme of these articles not to notice. He says, at p. 462:—"Something has been said about innocence being proof, *prima facie*, of want of reasonable and probable cause. I do not think it is. When mere innocence wears that aspect it is because the fact of innocence involves with it other circumstances which show that there was the want of reasonable and probable