

of counsel, it was not sufficient to protect the prosecutor, if he did not exercise reasonable care to ascertain the facts in reference to the alleged offence.

The question arose incidentally in *Horsely v. Style*, 9 Times L. R. 605 (1893). This was an action on the case brought to recover damages for the wrongful registration of an inventory and receipt as a bill of sale, which was not a bill of sale, whereby the plaintiff was injured as alleged in his credit. A verdict having been awarded plaintiff, on appeal to the Court of Appeal the verdict was set aside and judgment ordered to be entered for the defendant.

Lord Justice Esher, M.R., in delivering the judgment of the Court of Appeal, said: "That the defendant had used the law, which said that a person who was the grantee of a bill of sale could register it. The defendant had an inventory and receipt which his solicitor advised him should be registered as a bill of sale. The defendant, therefore, was using the law relating to bills of sale. It must be taken that he used the law erroneously. That was not enough to make him liable in this action. It must be proved that he used it maliciously and without reasonable and probable cause. It could not be said that there was a want of reasonable and probable cause, for his solicitor advised him to register it. Then as to malice, that was doing a thing from an improper and indirect motive. There must be actual malice. It was not enough that there should be legal malice, if there was such a thing. The learned judge, therefore, was wrong in telling the jury that malice in fact was not necessary. In the present case all the witnesses had been called and no further evidence could be given, and no evidence of malice had been given. There was no use in sending the case for a new trial, and judgment must be entered for the defendant."

In *Peck v. Peck*, 35 N. B. R., p. 484, it was shewn the charge upon which plaintiff was arrested was made on the advice of counsel, but it was further shewn the defendants did not disclose the facts fully to him. A verdict having been found for the plaintiff, a rule for a nonsuit or new trial was refused by the court en banc.

The following general rules should be borne strictly in mind:

1. In actions for malicious prosecution, the plaintiff must allege and prove absence of reasonable and probable cause and