

Meredith, Mcpherson, Hague & Holden, attorneys for appellants.

Nutting, McKeown & Boivin, attorneys for respondent.

Th. Chase Casgrain, K.C., counsel for respondent.

* * *

NOTES.—Voyez les causes de *Durocher vs Bradford*, 13 R. L., n. s., 73, et *Nadon vs Maurice*, 15 R. L., n. s., 290, et mes notes sous ces rapports.

Johnson, J., 1882, *Grothé vs Saunders*, 5 L. N., 213.—“The plaintiff executed a mortgage in favor of defendant, and on the faith of the representation that only one other mortgage existed on the property, the defendant made advances. The representation was untrue, the property being at the time mortgaged to its full value. The defendant then caused the plaintiff to be prosecuted criminally.

A bill was found, but the plaintiff was acquitted by the petit jury. Held, that the defendant acted with probable cause.”

Johnson, J., p. 214.—“As to malice, if there is no want of probable cause, malice is immaterial; but one way or the other, the only suggestion on the subject of malice was the fact that the bill had been laid before the grand jury without previous examination before a magistrate. It is a practice I do not approve of, unless there is necessity for it; but the law has provided for that and vested the Crown counsel with the discretion of permitting it as was done here; and the plaintiff gives the best reason for it, for he says the defendant had already addressed himself to a magistrate who would not act.

“I will only cite two authorities on the general principles in this sort of action. In *Williams vs Taylor*, 6 Bingham, 186. *Ch. J. Tindal*, said: “The facts ought to be such as to satisfy any “reasonable mind that the accuser had no ground for the proceeding but his desire to injure the accused.”

K. B., 1900, *Langevin vs Lecompte*, *R. J. Q.*, 19 *K. B.*, p. 198. *Cross, J.*, p. 204. — “Upon the whole the case illustrates the common error dwelt upon in the majority judgment of this Court in the recent case of *Deslauriers vs Jasmin*, 18 *K. B.*, 35, that a discharge by a magistrate holding a preliminary enquiry into a complaint alleging the commission of a criminal offence