

[The learned Chief Justice then stated what he took to be the undisputed facts appearing in evidence.]

The question is, whether the Chief Justice should have ruled that the plaintiff had shewn an absence of reasonable and probable cause for the prosecution.

In my opinion, his ruling should have been in favour of the defendants. . . .

Nothing appeared upon the evidence justifying even the suspicion, much less the finding, that Mitchell did not at the time he laid the information for forgery honestly believe the plaintiff guilty of forgery. . . . So far as appeared, Mitchell did not know him even by sight, and no motive for his making a false charge against him is suggested. . . .

Nor was there, in my opinion, anything which warranted the submission to the jury of the question as to the defendants having taken "reasonable care to ascertain the true facts of the case before Mitchell laid the information for forgery." . . .

[Reference to *Hamilton v. Cousineau*, 19 A. R. at pp. 210, 230.]

The plaintiff claims damages for his remand on the charge of forgery, and in *Fancourt v. Heaven*, 18 O. L. R. 492, the plaintiff recovered such damages. The circumstances of the case at bar are different. . . . In the case at bar, while the prosecution was not discontinued when Stanton (a handwriting expert) gave an opinion, as he afterwards did, that the forged documents were not in the handwriting of the plaintiff, there is nothing to shew when that opinion was given, further than that it was before the 2nd October, when the charge of forgery was withdrawn. In the meantime the plaintiff had been arrested on the charge of forgery, and had been identified. . . .

I do not see how any different conclusion can be reached as to the prosecution for theft than that to which I have come with regard to the prosecution for forgery, that it should have been ruled that the plaintiff had failed to establish want of reasonable and probable cause.

Though Stanton's opinion was that neither the order nor the receipt had been forged by the plaintiff, there was the evidence of Mackenzie and Noble that the plaintiff was the person who presented the forged order and received the book; and it is impossible, in my opinion, to say that Mitchell, acting after this identification . . . and in accordance with the advice, if not the direction, of the Crown Attorney, acted without reasonable and probable cause in laying the information for theft.

Appeal allowed with costs and action dismissed with costs.