

employees of White & Co. informed Mitchell and a detective who had been brought in that the writing on the money orders resembled that of Ford's. Mitchell then obtained a quantity of Ford's writing from White & Co., and on the advice of the detective he took the writing to an expert in writing named Staunton, who remarked that there was a resemblance in some of the letters, but requested that the writing should be left with him over night. They however took the writing away without obtaining any further opinion and consulted the Crown Attorney informing him that the expert said it was Ford's writing, who gave directions for a warrant. This, however, was not obtained till the following day. The prosecution after several remands dropped the charge of forgery and charged the plaintiff with theft. On this charge the plaintiff was sent for trial and acquitted and Mr. Staunton, who was called by the Crown, gave it as his opinion that neither the order nor the receipt for the book was in the handwriting of the plaintiff, Ford. The plaintiff then commenced this action claiming damages in respect of

(1) False arrest. (2) Prosecution for forgery. (3) Subsequent prosecution for theft.

At the close of the plaintiff's case, defendant's counsel objected that the absence of reasonable and probable cause was not proved and that the defendants were not liable for the acts of Mitchell, their agent, who laid the information, and moved for a nonsuit. The motion was refused and the defendants adduced evidence in support of their defence. The trial judge put several questions to the jury which were all answered in favour of the plaintiff, and the damages assessed down to the first arrest for forgery and the first remand were placed at \$1,500. From the first remand down to the time of the charge for forgery was abandoned \$750, and the damages in respect of prosecution for stealing at \$750.

Upon motion for judgment on the findings of the jury the Chief Justice ruled that there was an absence of reasonable and probable cause and directed that if the plaintiff so desired judgment should be entered in his favour for \$750, the damages awarded in respect of the prosecution for theft, leaving him to go to trial again on the other issue, as several of the questions which were intended to be submitted to the jury had not reached the jury and were not answered by them. The defendants then appealed to this Court on the following grounds.

(1) Absence of reasonable and probable cause was not shewn and the Chief Justice should have so ruled and have withdrawn the case from the jury.