

the plaintiff. The latter then began the present action for malicious prosecution, claiming \$10,000 damages.

The plaintiff moved to strike out the 5th, 6th, 7th, and 8th paragraphs of the statement of defence.

N. Murphy, K.C., for plaintiff.

G. H. Kilmer, for defendants.

THE MASTER:—In this action the defendants might have contented themselves with a traverse of want of reasonable or probable cause, as was the case in *Roberts v. Owen*, 6 Times L. R. 172, cited in *Odgers on Pleading*, 5th Eng. ed., p. 182. This was not done. On the contrary, the pleader endeavoured to shew that the defendants "having good and sufficient cause, the said William Kingsmill caused a warrant to issue for the arrest of the said plaintiff:" see par. 6. In this view he has apparently attempted to justify the conduct of the defendants, relying it may be on *Morse v. Kaye*, 4 Taunt. 34, cited by *Odgers* on p. 182. (I notice this case is not in the revised reports). In that case, however, it may be observed, it was sought to justify the plaintiff's arrest by alleging that he had acted "suspiciously." The Court on demurrer held that the facts from which that suspicion was inferred must be shewn.

The 5th paragraph sets out that Palangie, being asked by Kingsmill's agent why the note had not been paid when due, denied that there was any such firm as Kearns & Palangie, or that he had given authority for either the making or discounting of the note, or that he had in any way received any part of the proceeds. The 6th paragraph states that on application to the plaintiff on 16th January, no satisfaction could in any way be got from him, and that he was thereupon arrested as set out in the statement of claim.

So far as I can see, the two paragraphs are free from objection. They allege matters which may properly be submitted to the jury as shewing reasonable and probable cause. What the result will be is not for us to be troubled with now.

The 7th and 8th paragraphs deal with matters that occurred after the arrest. There is no view that occurs to me in which they can possibly afford any justification of the conduct of the defendants. The question is: Had the defendants reasonable and probable cause at the time when the information was laid? To supply an answer to this, the grounds of the decision of the magistrate are not in any way helpful. The only important fact is that the plaintiff was discharged. If the defendants desire, so much of the 7th paragraph as