

Full Court.]

HAWKINS v. SNOW.

*Malicious prosecution—Resentment held to constitute malice—Honest belief in the truth of charge will not excuse where proceedings are actuated by a motive constituting malice—Slight misstatement made by judge in charging jury not ground for setting aside verdict otherwise justified by evidence.*

Plaintiff, one of the coroners for the County of Halifax, went to the premises of defendant, an undertaker, and demanded possession of a body that was lying there, for the purpose of holding an inquest. Defendant having refused to comply with plaintiff's request, plaintiff returned subsequently, in defendant's absence, and made a second demand, and having been again refused, he entered the building by force and removed the body in the casket in which it had been placed, and proceeded to hold the inquest. Defendant thereupon caused plaintiff to be arrested, charged with feloniously entering defendant's premises and stealing the casket.

In an action brought by plaintiff against defendant for malicious prosecution, the trial Judge instructed the jury, in effect, that if the motive of defendant was resentment, that would amount to malice.

*Held*, that he was right in doing so.

At the argument it was contended on behalf of defendant that the presiding Judge should have directed the jury that if defendant honestly believed in the truth of the charge he laid before the magistrate, that would negative the existence of any indirect or improper motive on his part.

*Held*, that this contention was clearly wrong, as defendant might believe in the truth of the charge and at the same time be actuated by vindictiveness or spite, or some other improper motive which would constitute malice in law.

*Held*, further, that it was not sufficient ground for setting aside the verdict, that the presiding Judge, in addressing the jury, expressed himself strongly in favor of a verdict for plaintiff, where he, at the same time, instructed the jury that they were not bound to follow his opinion and that the responsibility of finding the facts was theirs.

*Held*, further, that it was not sufficient ground for setting aside the verdict that the presiding Judge, in addressing the jury, described as an admission made by the defendant an answer made by defendant which, without being a specific admission, indicated a belief on his part that plaintiff merely took the casket as a convenient way of taking the body, the verdict appearing in other respects to be entirely justified by the evidence.

Per McDONALD, C.J., dissenting, that while a Judge presiding at the trial of a case has a right to state to the jury his own view of the evidence, he has no right to impress his views upon them in such a way as to prejudice the free exercise of their own individual opinions.

*F. J. Congdon*, for plaintiff.

*H. McInnes*, for defendant.